


ARKANSAS CODE OF 1987 ANNOTATED

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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 12

TITLE 14: LOCAL GOVERNMENT (CHAPTERS 296-387)

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Sources

This volume contains legislation enacted by the Arkansas General Assembly through 1986 (2nd Ex. Sess.). Annotations are to the following sources:

- Southwestern Reporter 2nd Series through Volume 720, p. 281.
- Federal Supplement through Volume 648, p. 16.
- Federal Reporter 2nd Series through Volume 806, p. 1070.
- United States Supreme Court Reports, Lawyers' Edition, 2d Series through Volume 93, p. 426.
- Bankruptcy Reporter through Volume 67, p. 146.
- Arkansas Law Notes through the 1986 Edition.
- Arkansas Law Review through Volume 39, p. 771.
- University of Arkansas at Little Rock Law Journal through Volume 9, p. 222.

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TITLE 14

LOCAL GOVERNMENT

(CHAPTERS 1-69 IN VOLUME 9; CHAPTERS 70-161 IN
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Publisher's Notes. Acts 1941, No. 434, § 1, provided that Acts 1939, No. 379 was repealed in all Arkansas counties having a population, according to the federal census of 1940, between 9,400 and 9,500 in-

habitants. However, the repeal is probably invalid as a local or special law.

Effective Dates. Acts 1939, No. 379, § 15: effective on passage.

14-297-101. Construction.

This chapter shall not be construed so as to take from the county judge or the county court, or either of them, any exclusive original jurisdiction conferred on them by the Constitution of the State of Arkansas.

History. Acts 1939, No. 379, § 6;
A.S.A. 1947, § 76-806.

14-297-102. Creation.

There is created in each county of this state a highway commission to be known as the County Highway Commission.

History. Acts 1939, No. 379, § 1;
A.S.A. 1947, § 76-801.

14-297-103. Members generally.

(a)(1) The commission shall be composed of the county judge and two (2) other members.

(2) The two (2) other members shall be appointed by the county judge by and with the consent of the county levying court at its regular session for the levying of state and county taxes.

(3) At each regular session of the court, one (1) member of the commission shall be chosen for a term of two (2) years.

(4) In counties having more than one (1) levying court, each levying court shall have the right to elect one (1) member of the county highway commission.

(b) Each member of the county highway commission shall be a qualified elector of the county from which he is chosen.

(c) Each member shall serve until his successor shall have been elected and qualified.

(d) Vacancies in the membership of the highway commission, except as to the county judge, shall be filled by the county levying court at a special or regular meeting at the discretion of the county judge.

History. Acts 1939, No. 379, §§ 1-4, 14;
A.S.A. 1947, §§ 76-801 — 76-804, 76-814.

14-297-104. Oath of commissioners.

(a) Each commissioner elected by the county levying court, before entering upon the duties of his office and within fifteen (15) days after such election, shall take the oath prescribed by the Constitution for county officers. A copy of the oath shall be filed with the county clerk to be kept as a part of the county's records.

(b) The regular oath taken by the county judge upon his induction into the office as judge shall be regarded as his oath as a member of the

county highway commission and shall be as binding on him as if specially taken as a member of the county highway commission.

History. Acts 1939, No. 379, § 7;
A.S.A. 1947, § 76-807.

14-297-105. Organization.

(a) The county judge shall:

(1) Be chairman of the county highway commission and shall be a member thereof with full powers of membership; and

(2) Preside at all meetings of the commission and perform other duties usually devolved upon a chairman under like circumstances.

(b) The commission shall elect one (1) of its number as secretary, and the secretary shall keep a complete record of all proceedings of the commission.

History. Acts 1939, No. 379, § 3;
A.S.A. 1947, § 76-803.

14-297-106. Time and place of meetings — Quorum.

(a) The county highway commission shall hold its regular meeting at the office of the county judge on the first Monday in January, March, May, July, and November; but this shall not prevent the commission from meeting and transacting business at such other times as deemed proper by the chairman.

(b) At any meeting of the commission, two (2) members thereof shall be deemed a quorum for the transaction of business.

History. Acts 1939, No. 379, § 13;
A.S.A. 1947, § 76-813.

14-297-107. Compensation of commissioners — Number of meetings.

Each member of the county highway commission elected by the levying court shall receive, as compensation for performing the duties imposed upon him by this chapter, the sum of five dollars (\$5.00) for each day the commission is in session, payable out of the county road fund as other road and bridge expenses are paid. However, the county highway commission, as created in this chapter, shall not be allowed to meet more than one (1) day in each calendar month of each year, and no member of the county highway commission shall receive, as compensation for the duties imposed in this chapter, more than sixty dollars (\$60.00) per year.

History. Acts 1939, No. 379, § 9;
A.S.A. 1947, § 76-809.

CASE NOTES**County Judge.**

County judge is entitled to draw expense money as ex officio road commis-

sioner. *Ward v. Farrell*, 221 Ark. 363, 253 S.W.2d 353 (1952).

14-297-108. Powers and duties.

(a) The county highway commission shall have the power to do anything reasonably necessary to enable the commission to carry on the work contemplated by this chapter.

(b) The county highway commission shall be charged with the duty of laying out, building, constructing, repairing, and maintaining all county roads except those included in the state highway system.

History. Acts 1939, No. 379, §§ 6, 10;
A.S.A. 1947, §§ 76-806, 76-810.

14-297-109. Orders and contracts.

(a) A copy of all orders of, and contracts with, the commission shall be certified by the chairman and secretary of the commission and filed with the county clerk who shall record them in a well-bound book to be kept by him at the county's expense for that purpose.

(b) All such orders and contracts shall be considered of the same force and effect as if made by the county itself through its fully constituted agencies.

History. Acts 1939, No. 379, § 3;
A.S.A. 1947, § 76-803.

14-297-110. Prohibition on commissioner's interest in contracts.

No member of the county highway commission shall be interested, either directly or indirectly, in any contract made with the commission. A violation of this provision of this chapter shall be deemed a felony and punished as in cases of larceny.

History. Acts 1939, No. 379, § 8;
A.S.A. 1947, § 76-808.

14-297-111. Legal status of commission — Liability of commissioners.

The county highway commission shall be a body politic and corporate, with power to contract and be contracted with, and to sue and be sued.

(1) However, as to actions in tort, the commission shall be considered as an agency of the government and occupy the same status as a county.

(2) No commissioner shall be liable in court individually for an act done by him as commissioner unless the damages caused were the result of the commissioner's malicious acts.

History. Acts 1939, No. 379, § 5;
A.S.A. 1947, § 76-805.

14-297-112. Annual report to county levying court.

The county highway commission shall annually make a report to the county levying court in writing, showing in detail what the commission has done within the preceding year. The report shall be submitted to the court at the regular session for levying state and county taxes.

History. Acts 1939, No. 379, § 11;
A.S.A. 1947, § 76-811.

14-297-113. Road districts.

(a) There shall be only one (1) road district in each county, that district to be coextensive with the county and to be known as County Highway District.

(b) All moneys collected for road and bridge purposes in the county shall be credited to the county road and bridge fund.

History. Acts 1939, No. 379, § 12;
A.S.A. 1947, § 76-812.

Publisher's Notes. Acts 1939, No. 379, § 12, in part, abolished all common or county road districts, transferring their money, including the three-mill road tax,

to the county road and bridge fund and provided that all outstanding valid indebtedness was to be paid out of the county highway fund and that all contracts were to be carried out by the county highway commission.

CHAPTER 298

ESTABLISHMENT, ALTERATION, AND VACATION OF COUNTY ROADS

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- 14-298-101. Powers of county court.
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- 14-298-122. Opening or altering roads in counties voting for road tax — Notice by actions.
- 14-298-123. Replacement of washed-out road.
- 14-298-124. Altering public roads on private land.
- 14-298-125. Federal authority.

Cross References. Power of county judge to operate system of county roads, Ark. Const., Amend. No. 55, § 3.

Preambles. Acts 1923, No. 611 contained a preamble which read: "Whereas, the existing law regulating the opening of public roads on petition of interested property holders is the same as when created in 1871; and

"Whereas, in 1871 when the existing laws were created our counties in most instances were much larger than the area of the present counties and the county judges were not as familiar with all parts of their respective counties as is the case at present, and, too, the automobile has so changed the importance of public roads that today a large part of a county judge's time is devoted to the question of roads and the county judge is more or less familiar with the needs of roads in all sections; and

"Whereas, there is a need for a simpler method of making application to the County Court for the opening of a public road than is prescribed in Act No. 26 of the Acts of 1871, whereby it is necessary to have viewers and to go through a very long procedure, which in the end leaves the matter to the County Court; and

"Whereas, the amendment, as herein provided, to said Act No. 422 of the Acts of 1911 does not repeal any part of Act No. 26 of the Acts of 1871 but simply provides for the additional procedure in the matter, so that either may be followed"

Effective Dates. Acts 1871, No. 26, § 74:

Acts 1897 (Ex. Sess.), No. 10, § 3: effective on passage.

Acts 1899, No. 202, § 2: effective on passage.

Acts 1907, No. 427, § 2: effective on passage.

Acts 1911, No. 422, § 2: approved May

31, 1911. Emergency clause provided: "This Act being necessary for the public peace, health and safety shall take effect from and after its passage."

Acts 1949, No. 181, § 3: Feb. 28, 1949. Emergency clause provided: "Whereas, the United States Government is now constructing a number of flood-control projects in the State of Arkansas, necessitating the abandonment and relocation of certain county roads located in these projects, an emergency is hereby declared to exist, and this act being necessary for immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1963, No. 185, § 4: approved Mar. 7, 1963. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that property ownerships and highway and road rights-of-way have been left clouded due to the uncertain status of certain County Court Condemnation Orders; that there is urgent need to clear up such uncertainties; therefore this Act being necessary to the public peace, health, and safety of the people of Arkansas, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1965, No. 387, § 5: Mar. 19, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of law relative to notice to landowners in instances where condemnations of private property for highway purposes is affected in the County Court are unclear, and that such want of clarity has resulted in confusion of land titles and unnecessary litigation arising from such condemnations, and that the immediate passage of this Act is necessary in order to correct said situation. Therefore, an emergency is hereby

declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall

be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Construction contractor's liability for injuries to third persons by materials or debris on highway during course of construction or repair. 3 ALR 4th 770.

Liability of governmental entity for injury, resulting from defect or obstruction in shoulder of street or highway. 19 ALR 4th 532.

Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR 4th 674.

State or local governmental unit's liability for injury to private highway construction worker based on its own negligence. 29 ALR 4th 1188.

Towing, impounding, or destruction of motor vehicles parked or abandoned on streets and highways. 32 ALR 4th 728.

Personal injury liability of civil engineer for negligence in highway or bridge construction or maintenance. 43 ALR 4th 911.

14-298-101. Powers of county court.

All public roads and highways shall be laid out, opened, and repaired agreeably to the provisions of this chapter. The county court of each county in this state shall have full power and authority to make and enforce all orders necessary as well for establishing and opening new roads as for changing and vacating any public road or part thereof.

History. Acts 1871, No. 26, § 2, p. 56;
C. & M. Dig., § 5226; Pope's Dig., § 6941;
A.S.A. 1947, § 76-901.

CASE NOTES

Jurisdiction.

Special act creating road improvement district and providing that improvement should be made on road then laid out or which might be laid out by county court or with charges approved by county court did not infringe the constitutional jurisdiction of county court. *Bush v. Delta*

Road Imp. Dist., 141 Ark. 247, 216 S.W. 690 (1919).

Before a village became an incorporated town, the county court had jurisdiction to vacate an old county road and open a new road. *Stumpff v. Louann Provision Co.*, 173 Ark. 192, 292 S.W. 106 (1927).

14-298-102. Notice prerequisite to petition for county road.

(a) Previous to any petition being presented for a county road, or for the alteration or vacation of a county road, notice thereof shall be given by publication in some newspaper, published in the county, if one exists.

(b) If there is no newspaper published in the county, then notice shall be given by advertisements set up in three (3) public places in each township through or into which any part of the road is designed to be laid out, altered, or vacated, stating the time when the petition is to

be presented and the substance thereof. Notice shall be duly authenticated and presented with the petition to the county court.

History. Acts 1871, No. 26, § 45, p. 56;
C. & M. Dig., § 5230; Pope's Dig., § 6945;
A.S.A. 1947, § 76-904.

CASE NOTES

Failure to Give Notice.

A judgment of the county court opening a road over a railroad right-of-way was not invalid because the petition was presented before notice was given that the application would be made for the road,

where the court did not act upon the petition until the notice had been properly authenticated and filed. *Kansas City S.R.R. v. Sevier County*, 171 Ark. 900, 286 S.W. 1035, 287 S.W. 404 (1926).

14-298-103. Application by petition — Bond.

(a) All applications for laying out, viewing, reviewing, altering, or vacating any county road shall be by petition to the county court, signed by at least ten (10) freeholders of the county.

(b) One (1) or more of the signers to the petition shall enter into bond, with sufficient security, payable to the State of Arkansas for the use of the county. This bond shall be conditioned that the persons making the application for a view, review, alteration, or vacation of any road shall pay into the treasury of the county the amount of all costs and expenses accruing on the view, review, alteration, or vacation. In case the prayer of the petitioners shall not be granted, or when the proceedings had in pursuance thereof shall not be finally confirmed and established, and, on neglect or refusal of the persons so bound, after a liability shall have accrued, to pay into the treasury, according to the tenor of the bond, all costs and expenses that shall have accrued, the county clerk shall deliver the bond to the prosecuting attorney of the circuit, whose duty it shall be to collect and pay over the bond to the county treasury.

(c) In all cases of contest, the court having jurisdiction of the case shall have power to render judgment for costs, according to justice, between the parties.

History. Acts 1871, No. 26, § 43, p. 56;
C. & M. Dig., § 5228; Pope's Dig., § 6943;
A.S.A. 1947, § 76-902.

Publisher's Notes. This section may be superseded by § 14-298-120.

CASE NOTES

Signatures.

One contesting the establishment of a road was in no position to complain because the bond was signed by only two signers but not by a surety, as the bond was given to protect the county for costs and expenses incident to the view. *Kan-*

sas City S.R.R. v. Sevier County, 171 Ark. 900, 286 S.W. 1035, 287 S.W. 404 (1926).

Where a petition to open a county road is not signed by 10 freeholders of the county as required by this section, the county court does not acquire jurisdiction of the proceeding. *First Pyramid Life Ins.*

Co. v. Reed, 247 Ark. 1003, 449 S.W.2d 178 (1970).

14-298-104. Contents of petition.

All petitions for laying out, altering, or vacating any county road shall specify the place of beginning, the intermediate points, if any, and the place of termination of the road.

History. Acts 1871, No. 26, § 44, p. 56; C. & M. Dig., § 5229; Pope's Dig., § 6944; A.S.A. 1947, § 76-903.

Publisher's Notes. This section may be superseded by § 14-298-120.

CASE NOTES

ANALYSIS

Description of road.
Items included.

Description of Road.

In the location or establishment of the road, all portions of it do not need to conform with perfect exactitude to the description called for in the petition, but the court may vary from the line to avoid unnecessary inconvenience, unreasonable costs, or for other justifiable reasons. Wallace v. Desha County, 194 Ark. 848, 109 S.W.2d 950 (1937).

Where county court finds it proper to grant petition, it should establish the

road substantially as called for in the petition, but if only a part of the road may be proper, that part should be substantially on the section lines described in the petition. Wallace v. Desha County, 194 Ark. 848, 109 S.W.2d 950 (1937).

Items Included.

The map or plans, specifications, and estimate of costs must be regarded as a part of the petition for organization of a road district for the purpose of determining whether a proposed improvement is certainly and definitely described. Tarvin v. Road Imp. Dist. No. 1, 137 Ark. 354, 209 S.W. 81 (1919).

14-298-105. Appointment of viewers — Duties.

(a) On presentation of the petition and proof of notice of publication as set out in § 14-298-102 and if the county court is satisfied that proper notice has been given in accordance with the provisions of this chapter, the court shall appoint three (3) disinterested citizens of the county as viewers, who shall also:

(1) Be a jury to assess and determine the compensation to be paid in money for the property sought to be appropriated, without deduction for benefits to any property of the owners; and

(2) Assess and determine what damages each owner of the lands over which the road is to run shall suffer by the opening and construction of the road.

(b) The county court shall issue its order directing the viewers to proceed, on a day to be named in the order or, on their failing to meet on that day, within five (5) days thereafter, to view, survey, and lay out or alter the road, and also determine whether the public convenience requires that the road, or any part thereof, shall be established.

History. Acts 1871, No. 26, §§ 46, 48, p. 56; C. & M. Dig., §§ 5231, 5233; Pope's Dig., §§ 6946, 6948; A.S.A. 1947, §§ 76-905, 76-907.

Publisher's Notes. This section may be superseded by § 14-298-120.

14-298-106. Surveyors.

(a) The viewers may call to their assistance a competent surveyor to assist them in laying out and surveying or altering any road they may be ordered by the county court to view, survey, and lay out or alter.

(b) It shall be the duty of every surveyor, when called on by any viewer or reviewers, to survey any road they may be required to view or review, lay out, establish, or alter and to furnish all courses, bearings, distances, plats, and surveys of roads required by them to be laid out, established, or altered, as viewers or reviewers, when demanded by them.

History. Acts 1871, No. 26, §§ 47, 63, p. 56; C. & M. Dig., §§ 5232, 5242; Pope's Dig., §§ 6947, 6957; A.S.A. 1947, §§ 76-906, 76-920.

Cross References. County surveyor to accompany viewers and reviewers to run or measure proposed roads, § 14-15-702.

Publisher's Notes. This section may be superseded by § 14-298-120.

14-298-107. Penalty for neglect or refusal of viewers, reviewers, or surveyors to perform duties.

If any person shall be appointed by the county court as a viewer or reviewer, or shall be appointed by the viewers or reviewers as a surveyor of any road, and shall refuse or neglect to perform the duties required by this chapter, without making satisfactory or legal excuse therefor, that person shall be fined in any sum not less than twenty dollars (\$20.00) nor more than fifty dollars (\$50.00). This sum is to be recovered by action in the name of the county, before any justice of the peace of the county; and the amount of the fine, when collected, shall be paid into the county treasury, to be disposed of according to law.

History. Acts 1871, No. 26, § 62, p. 56; C. & M. Dig., § 5245; Pope's Dig., § 6960; A.S.A. 1947, § 76-921.

Publisher's Notes. This section may be superseded by § 14-298-120.

14-298-108. Notices to landowners and viewers.

(a) It shall be the duty of one (1) of the petitioners to give at least five (5) days' notice in writing to:

(1) The owner, or his agents, if residing within the county, or, if the owner is a minor, idiot, or insane person, then to the guardian of that person, if a resident of the county, through whose land the road is proposed to be laid out and established; and

(2) The viewers named in the order of the county court of the time and place of meeting as specified in the order.

(b) It is further made the duty of the principal petitioner, if the road is proposed to be laid out on or through any land owned by nonresidents of the county, to cause notice to the nonresidents of the county to be published for two (2) consecutive weeks in some newspaper published in the county. If there is no newspaper published in the county, then notice shall be given to the nonresident by posting a notice of the time and place of meeting of the viewers as specified in the order of the county court. The substance of the petition for the road shall also be posted upon the door of the office of the clerk of the county court for at least two (2) weeks before the time fixed for the meeting of the viewers.

History. Acts 1871, No. 26, § 49, p. 56; C. & M. Dig., § 5234; Pope's Dig., § 6949; A.S.A. 1947, § 76-908.

Publisher's Notes. This section may be superseded by § 14-298-120.

CASE NOTES

ANALYSIS

Failure to give notice.
Waiver of notice.

Failure to Give Notice.

A judgment of the county court establishing a public road cannot be set aside on certiorari because the owners of the land taken for the road had no notice of the meeting of the viewers appointed by the court to lay out the road and because the viewers met on a day prior to the day designated by the court for them to meet. *Lonoke County v. Lee*, 98 Ark. 345, 135 S.W. 833 (1911).

The fact that a landowner had no notice of the meeting of the viewers for the as-

essment of damages is an irregularity which does not affect the jurisdiction of the county court and does not render its judgment void. *Polk v. Road Imp. No. 2*, 123 Ark. 334, 185 S.W. 453 (1916).

Consent of landowner must be obtained where no notice was given. *Nevius v. Reed*, 176 Ark. 903, 5 S.W.2d 327 (1928).

Waiver of Notice.

The fact that a landowner filed exception to the report of the viewers who were laying out a road on his land was not a waiver of his right to notice. *Nevius v. Reed*, 176 Ark. 903, 5 S.W.2d 327 (1928).

Cited: *Johnson v. West*, 89 Ark. 604, 117 S.W. 770 (1909).

14-298-109. Viewing, surveying, and laying out road.

It shall be the duty of the viewers to meet at the time and place specified in the order, or within five (5) days thereafter. After taking an oath or affirmation to faithfully and impartially discharge the duties of their appointments, respectively, they shall take to their assistance two (2) suitable persons as chain carriers and one (1) person as marker and proceed to view, survey, and lay out or alter the roads as prayed for in the petition, or as near the same as, in their opinion, a good road can be made with reasonable expense, taking into consideration the ground, convenience, and inconvenience and expense, which will result to individuals as well as to the public if the road shall be established, or any part thereof, or altered as prayed for. In laying out or altering or establishing public highways, the highways shall be located as near as practicable on section and subdivision lines.

History. Acts 1871, No. 26, § 50, p. 56; 1899, No. 202, § 1, p. 364; C. & M. Dig., § 5235; Pope's Dig., § 6950; A.S.A. 1947, § 76-909.

Publisher's Notes. This section may be superseded by § 14-298-120.

CASE NOTES

Liability of Viewers.

A road overseer who, in pursuance of a valid order of the county court opening a road, entered upon another's land and re-

moved a fence was not liable for injury to personal property caused by stock entering the premises. *Cockrum v. Williamson*, 53 Ark. 131, 13 S.W. 592 (1891).

14-298-110. Determination of road width.

The viewers shall report what width the road should be to promote public convenience. However, the county courts shall have power to determine what shall be the width of each road in their respective counties.

History. Acts 1871, No. 26, § 48, p. 56; C. & M. Dig., § 5233; Pope's Dig., § 6948; A.S.A. 1947, § 76-907.

Publisher's Notes. This section may be superseded by § 14-298-120.

14-298-111. Assessment of damages.

The viewers shall assess and determine the damages sustained by any person through whose premises the road is proposed to be established, mentioning the damages to each tract separately.

History. Acts 1871, No. 26, § 51, p. 56; C. & M. Dig., § 5236; Pope's Dig., § 6951; A.S.A. 1947, § 76-910.

Publisher's Notes. This section may be superseded by § 14-298-120.

CASE NOTES

ANALYSIS

Judicial review.
Railroads.

Judicial Review.

Court may review assessment of damages by viewers. *Nemier v. Bramlett*, 103 Ark. 209, 146 S.W. 486 (1912).

Railroads.

The viewers are required to assess the damages suffered by a railroad company by the establishment of a public road across its right-of-way. *St. Louis S.W.R.R. v. Royall*, 75 Ark. 530, 88 S.W. 555 (1905).

14-298-112. Report of viewers — Contents.

Viewers shall make and sign a report in writing, stating:

(1) Their opinion in favor of or against the establishment, alteration, or vacation of a road, or any part thereof, and set forth the reason for their opinion;

(2) The commencement and termination, courses, and distances of the road, so that the road can be readily formed and located;

(3) The value of the property sought to be appropriated for the establishment of the road; and

(4) The amount of damages, if any, and to whom, which by them have been assessed and which would accrue by the establishing and opening of the road.

History. Acts 1871, No. 26, § 52, p. 56; **Publisher's Notes.** This section may C. & M. Dig., § 5237; Pope's Dig., § 6952; be superseded by § 14-298-120. A.S.A. 1947, § 76-911.

14-298-113. Proceedings on report — Compensation and damages.

The county court, on receiving the reports of the viewers as set out in § 14-298-112, shall cause the report to be read publicly on the second day of the session.

(1) If no legal objection shall be made to the reports and the court is satisfied that the road, or any part thereof, will be of sufficient importance to the public to cause the damages and the compensation which have been assessed as set out in § 14-298-111 to be paid by the county, and that the amount so assessed is reasonable and just, and the report of the viewers being favorable thereto, the court shall order the damages to be paid to the persons entitled thereto from the county treasury, and thenceforth the road shall be considered a public road.

(2) If the court shall be of the opinion that the road is not of sufficient public utility for the county to pay the compensation and damages assessed as set out in § 14-298-111 and the petitioners refuse to pay the compensation and damages, then the road shall not be declared a public highway or road and the costs accruing by reason of the application shall be paid by the petitioners, as provided in § 14-298-104. If the report of the viewers is against the proposed road or alteration, or if, in the opinion of the court, the road is not of public utility, then no further proceedings shall be had thereon and the obligors in the bond securing costs and expenses shall be liable for the full amount of the costs and expenses.

History. Acts 1871, No. 26, § 53; C. & M. Dig., § 5238; Pope's Dig., § 6953; **Publisher's Notes.** This section may A.S.A. 1947, § 76-912. be superseded by § 14-298-120.

CASE NOTES

ANALYSIS

Costs and expenses.
Description of road.
Judicial review.
Rights of landowners.

Costs and Expenses.

In proceeding to establish county road

where judgment was entered against petitioners for the costs and damages instead of county, judgment could be corrected by nunc pro tunc entry if result of clerical error, but even if not error petitioners could not complain since if petitioners do not pay, or are unwilling to do so, the court might declare such road not a public highway and adjudge all costs against pe-

tioners. *Cain v. Littrell*, 202 Ark. 387, 150 S.W.2d 630 (1941).

Description of Road.

County court should establish the road substantially as called for in the petition, and if only a part of the road may be proper, that part should be substantially on the section lines described in the petition. *Wallace v. Desha County*, 194 Ark. 848, 109 S.W.2d 950 (1937).

In the location or establishment of the road, all portions of it do not need to conform with perfect exactitude to the description called for in the petition, but the court may vary from the line to avoid unnecessary inconvenience, unreasonable costs, or for other justifiable reasons. *Wallace v. Desha County*, 194 Ark. 848, 109 S.W.2d 950 (1937).

County court's order establishing road, approved by the circuit court on appeal, was void where it was so indefinite as to the description of location of the roadway that it could not be found. *Wallace v. Desha County*, 194 Ark. 848, 109 S.W.2d 950 (1937).

Judicial Review.

Court may review assessment of damages by viewers. *Nemier v. Bramlett*, 103 Ark. 209, 146 S.W. 486 (1912).

In proceedings looking to the establishment of public roads, the report of the viewers cannot be considered until the succeeding term of the county court after the term at which the viewers are appointed. *Rust v. Kocourek*, 130 Ark. 39, 196 S.W. 938 (1917).

Rights of Landowners.

The owner of land through which a public road had been laid out had no right to obstruct it, though no compensation had been made to him; he should have resisted the application for it in the county court, or resorted to proper means to have it vacated. *Draper v. Mackey*, 35 Ark. 497 (1880).

For establishment of road, determination by court of controversy as to ownership of coterminous lands held by some of the parties to the proceeding under the statute of limitations was not necessary. *Wallace v. Desha County*, 194 Ark. 848, 109 S.W.2d 950 (1937).

14-298-114. Order opening road.

After any road has been established and declared a public highway, the county court shall cause an order to be issued to the overseer of the proper road district directing the road to be opened.

History. Acts 1871, No. 26, § 54, p. 56; C. & M. Dig., § 5239; Pope's Dig., § 6954; A.S.A. 1947, § 76-913.

Publisher's Notes. This section may be superseded by § 14-298-120.

14-298-115. Review.

(a) After the viewers of any county road shall have made return in favor of the road and before the road shall have been established, any citizen of the county whose lands are affected by the road may apply to the county court by petition for a review of the road, as provided in § 14-298-104.

(b) The court, on being satisfied from the petition that a review should be granted, shall appoint three (3) disinterested freeholders of the county to review the road and issue their order to the reviewers directing them to meet at a time and place therein specified, or within five (5) days thereafter. After taking the oath required of viewers, they shall proceed to examine the route surveyed for the road by the former viewers and make a report in writing to the court stating their opinion

in favor of or against the establishment of the road, or any part thereof, and their reasons therefor.

(c) The petitioners for review shall cause at least five (5) days' notice to be given to the principal petitioner for the road of the time and place of meeting of the reviewers.

(d) If a review is granted, then no further proceedings shall be had until the reviewers have reported their action to the county court.

(e)(1) If the report of the reviewers is in favor of the road, the road shall be established, recorded, and opened, and the persons bound for the review shall pay into the county treasury the amount of the costs of the review.

(2) If the report is against the establishment of the road, no further proceedings shall be had about the road before the court, and the persons executing the first bond shall pay into the county treasury the costs and expenses of the views, survey, and review of the road.

History. Acts 1871, No. 26, § 55, p. 56; **Publisher's Notes.** This section may C. & M. Dig., § 5240; Pope's Dig., § 6955; be superseded by § 14-298-120. A.S.A. 1947, § 76-914.

14-298-116. Appeal to circuit court.

(a) An appeal from the final decision of the county court for a new county road or for vacating, altering, or reviewing any county road shall be allowed to the circuit court; notice of the appeal is given by the appellant during the same term of the county court at which the decision was made.

(b) The appellant shall, within ten (10) days following the decision, enter into bond, with good and sufficient security, to be approved by the clerk of the county court, for the payment of all costs and expenses arising from the appeal.

(c) Minors, idiots, and lunatics, or their guardians, may appeal without giving bond.

(d) The circuit court may order another view or review of the road or make other orders as justice of the case demands.

(e) The county court, after notice of appeal has been given, shall not issue any order in the premises until after ten (10) days have expired from the time of making the decision appealed from.

(f) If the appeal has not been perfected agreeably to the provisions of this chapter, the clerk shall issue the order for the opening of the road.

(g) The decisions of the circuit court on petitions for roads taken into the county by appeal shall be recorded in the record of the county court from which the appeal is taken.

History. Acts 1871, No. 26, § 56, p. 56; **Publisher's Notes.** This section may C. & M. Dig., § 5241; Pope's Dig., § 6956; be superseded by § 14-298-120. A.S.A. 1947, § 76-915.

CASE NOTES

ANALYSIS

Applicability.

Bond.

Perfection of appeals.

Quashing of proceedings.

Applicability.

This section was not repealed by the general law regulating appeals. *Baughner v. Rudd*, 53 Ark. 417, 14 S.W. 623 (1890); *Ward v. Wilson*, 127 Ark. 266, 191 S.W. 917 (1917).

Where road is extended under provisions of § 14-298-121, the general statute for appeals governs and not this section. *Carter v. Randolph County*, 146 Ark. 221, 225 S.W. 297 (1920).

Bond.

Appeal was not invalidated because bond was signed by appellants only, nor because it was approved by the judge instead of by the clerk. *Nemier v. Bramlett*, 103 Ark. 209, 146 S.W. 486 (1912).

Perfection of Appeals.

Where there is delay after the first day of the term in the filing of the transcript, it becomes a matter of discretion with the trial court whether the appeal may be prosecuted, and it should be dismissed in the absence of a satisfactory explanation of the delay. *Briner v. Holleman*, 115 Ark. 213, 170 S.W. 1010 (1914).

Quashing of Proceedings.

A writ of certiorari to quash proceedings in the county court for the building of a new road asked upon the ground that the record failed to show that 10 freeholders of the county petitioned for the road would be denied where the applicant waited nearly a year before applying for the writ and where the evidence dehors the record showed that at least 10 of the petitioners for the road were freeholders of the county. *Johnson v. West*, 89 Ark. 604, 117 S.W. 770 (1909).

14-298-117. Vacation of road.

(a) When any county road, or any part of any county road, shall be considered useless, any ten (10) citizens residing in that portion of the county may make application by petition agreeable to § 14-298-124 to the county court to vacate the road, setting forth in the petition the reason why the road ought to be vacated, which petition shall be publicly read at a regular session of the county court, with the proof of notice and publication required by this chapter. No further proceedings shall be had thereon until the next regular session of the court.

(b) If no objections are made and filed, the county court may declare the road vacated, or any part thereof that it may deem necessary.

(c) If objection is made in writing, the county court shall appoint three (3) viewers to view the road who shall proceed, after taking the oath or affirmation required by this chapter, to view the road as aforesaid and make written report of their opinion thereon, and their reason for the opinion, to the county court. If the viewers shall report in favor of vacating the road, or any part thereof, the court, if it deems the report reasonable and just, may declare the road, or any part thereof, vacated, agreeable to the report of the viewers.

(d) The costs thereof and expenses incident thereto shall be paid by the petitioners unless the county court shall order the costs and expenses paid out of the county treasury.

History. Acts 1871, No. 26, § 58, p. 56;
C. & M. Dig., § 5247; Pope's Dig., § 6966;
A.S.A. 1947, § 76-918.

CASE NOTES

ANALYSIS

Grounds.
Procedures required.
Reversion to landowners.

Grounds.
The court cannot arbitrarily vacate a road without finding it has become useless. *Hill v. McClintock*, 175 Ark. 1059, 1 S.W.2d 564 (1928).

Procedures Required.
Where a county court regularly made an order vacating an old road and establishing a new public highway in lieu thereof, it could not, at a subsequent term, vacate the order and reestablish the old road, without the notice, petition, and review prescribed by law. *Reiff v. Conner*, 10 Ark. 241 (1849) (decision under prior law).

In a proceeding to vacate a road, failure to give notice of the proceeding and failure to appoint viewers renders the order vacating the road erroneous. *Hill v. McClintock*, 175 Ark. 1059, 1 S.W.2d 564 (1928).

Reversion to Landowners.
Where a road is established by limitation or prescription and the road is a paved roadway with center line markings which appears to be a regularly-traveled through highway, the responsibility for the land does not involuntarily and without notice revert to the abutting or preceding landowners simply because of an alleged de facto "abandonment" and non-use of a road for a continuous period of seven years. *Lacey v. Bekaert Steel Wire Corp.*, 619 F. Supp. 1234 (W.D. Ark. 1985), *aff'd*, 799 F.2d 434 (8th Cir. 1986).

14-298-118. Compensation.

(a) All persons required to render services under the provisions of this chapter shall be paid the following out of the county treasury for each day necessarily employed, payments to be charged as costs and expenses:

(1) Viewers or reviewers	\$1.50
(2) Chain carriers	1.50
(3) Markers	1.50
(4) Surveyors	5.00

(b) The amount due to each person and the number of days employed shall be certified under oath by the viewers or reviewers, as the case may be.

(c) The county shall be reimbursed for the payment so made and for all other necessary expenses incident to the proceedings, by the petitioners, as hereinbefore provided.

(d) The county clerk shall receive fees he may be entitled to by law, to be taxed as costs and paid as provided in this section.

History. Acts 1871, No. 26, § 64, p. 56;
C. & M. Dig., § 5243; Pope's Dig., § 6958;
A.S.A. 1947, § 76-922.

14-298-119. Limitation on damages for land taken.

No part of this chapter shall be so construed as to entitle any person whose lands, or any part thereof, may be appropriated under this chapter to a public highway to any further compensation and damages than the value of property appropriated and damages sustained by the owner thereof by reason of a road being established on and over the property, over and above such value.

History. Acts 1871, No. 26, § 71, p. 56; C. & M. Dig., § 5244; Pope's Dig., § 6959; A.S.A. 1947, § 76-923. **Publisher's Notes.** This section may be superseded by § 14-298-120.

14-298-120. Opening, changing, and classifying roads, etc. by order of county court.

(a)(1) The county courts shall have power to:

(A) Open new roads;

(B) Make changes in old roads as they deem necessary and proper; and

(C) Classify the roads and bridges in their respective counties for the purposes of this section and § 27-67-212.

(2) When the change shall be made or any new road opened, the road shall be located on section lines as nearly as may be, taking into consideration the conveniences of the public travel, contour of the country, etc. First class roads hereafter established or opened shall not be less than fifty feet (50') wide.

(3) An appropriate order of the county court shall be made and entered of record therefor.

(b) Any five (5) or more interested landowners may petition the county court for the opening of any road as a public road. The petition shall give the starting point and terminus of the road, as well as intermediate points, and such other description or plat as will permit the location of the road by the county surveyor.

(c) The petition shall be accompanied by a bond signed by at least one (1) of the petitioners and by other good and sufficient sureties, which bond shall provide for reimbursing the county for any claims that may be sustained against the county for lands taken by opening of the road.

(d) On filing the petition, the county court shall set a date for the hearing, which date shall not be more than thirty (30) days from the filing thereof. The county clerk shall publish for one (1) insertion in some newspaper having a bona fide circulation in the county at least ten (10) days before the date of hearing a notice as to the filing of the petition and naming the day on which the county court will hear those for and against the opening of the road.

(e) On the day named, the county court shall hear those for and against the opening of the petitioned road and shall grant or deny the prayer of the petitioners as may be deemed wise and expedient by the

court and shall make and cause to be entered an appropriate court order either laying out or changing the road, or denying the petition.

(f) Upon the entry of the foregoing order of the county court, the clerk of the court within ten (10) days shall cause to be served, upon each of the owners of record of any lands affected by the order, a copy of the order, which service shall be in the form and manner provided by law for service in civil actions.

(g) Upon return to be made by the sheriff showing service of the order upon any landowner, the clerk shall note in the records of the county court the record of the service, showing the date thereof and the person served, which shall be and become a part of the permanent records of the court.

(h) Upon the entry of the order by the county court, the records shall constitute valid constructive notice to all subsequent purchasers of the lands and all other persons acquiring or holding the lands by or through the landowners affected.

(i) If the owner of the land over which any road shall hereafter be so laid out by the court shall refuse to give a right-of-way therefor, then the owner shall have the right to present his verified claim to the county court for damages he may claim by reason of the road being laid out on his land.

(j) If he is not satisfied with the amount allowed by the court, he shall have the right to appeal as now provided by law from judgments of the county court.

(k) However, no claim shall be presented for such damages after twelve (12) months from the date of the service of the order as provided in this section. When the order is made and entered of record laying out or changing any road, the county court or judge thereof shall have the right to enter upon the lands of the owner and proceed with the construction of the road. All damages allowed under this section shall be paid out of any funds appropriated for roads and bridges and, if no funds are so appropriated, then damages shall be paid out of the general revenue fund of the county.

(l) This section and § 27-67-212 shall be cumulative to all existing laws and parts of laws, and shall not be construed as to repeal any existing laws, or part of laws, unless they are in conflict herewith, and then only to the extent of the conflict.

History. Acts 1965, No. 387, §§ 1, 2, 4;
A.S.A. 1947, §§ 76-926, 76-927, 76-928n.

Cross References. Classification of
roads, § 14-299-101.

CASE NOTES

ANALYSIS

Purpose.
Claims for damages.

Purpose.
This section corrected landowner notice

defects of § 14-298-121 in condemnation proceedings. Greig v. Crawford County, 256 Ark. 202, 506 S.W.2d 523 (1974).

Claims for Damages.

This section allows one year to file claim for condemnation damages. Greig v.

Crawford County, 256 Ark. 202, 506 S.W.2d 523 (1974).

Making the date of taking the same as the date of the condemnation order did not conflict with this section where the landowners filed a claim for damages within 12 months of the entry of the order, but it had not been shown when they received notice. *Greig v. Crawford County*, 256 Ark. 202, 506 S.W.2d 523 (1974).

The statute of limitations on damages for the taking by the State Highway Com-

mission of a fee title to a road crossing had not begun to run as no legal notice was sent to the owner and the commission's entrance on the land was not notice to the owner, since there was a prior easement on the land which the owner knew about and the commission's entrance upon the land was consistent with the easement. *Arkansas State Hwy. Comm'n v. Coffelt*, 257 Ark. 770, 520 S.W.2d 294 (1975).

Cited: Gipson v. Brand, 252 Ark. 1136, 482 S.W.2d 630 (1972).

14-298-121. Opening or altering roads in counties voting for road tax generally.

(a)(1) The county courts shall have power to:

(A) Open new roads;

(B) Make changes in old roads as they may deem necessary and proper; and

(C) Classify the roads and bridges in their respective counties for the purpose of this chapter.

(2) When the change shall be made or any new road opened, the road shall be located on section lines as nearly as may be, taking into consideration the conveniences of the public travel, contour of the country, etc. First class roads hereafter established or opened shall not be less than fifty feet (50') wide.

(3) An appropriate order of the county court shall be made and entered of record therefor.

(b) Any five (5) or more interested landowners may petition the county court for the opening of any road as a public road. The petition shall give the starting point and terminus of the road, as well as intermediate points, and other description or plat which permits the location of the road by the county surveyor.

(c) The petition shall be accompanied by a bond signed by at least one (1) of the petitioners and by other good and sufficient sureties. The bond shall provide for reimbursing the county for any claims that may be sustained against the county for lands taken by opening of the road.

(d) On filing the petition, the county court shall set a date for the hearing, which date shall not be more than thirty (30) days from the filing thereof. The county clerk shall publish for one (1) insertion in some newspaper published and having a bona fide circulation in the county a notice as to the filing of the petition and naming the day on which the county court will hear those for and against the opening of the road.

(e) On the day named, the county court shall hear those for and against the opening of the petitioned-for road and shall grant or deny the prayer of the petitioners as they may be deemed wise and expedient

by the court and shall make and cause to be entered an appropriate court order either laying out the road or denying the petition.

(f) If the owner of the land over which any road shall hereafter be so laid out by the court shall refuse to give a right-of-way therefor, or to agree upon the damages therefor, then that owner shall have the right to present his verified claim to the county court for such damages as he may claim by reason of the road being laid out on his land and, if he is not satisfied with the amount allowed by the court, he shall have the right to appeal as now provided by law from judgments of the county court.

(g) However, no claim shall be presented for the damages after twelve (12) months from the date of the order laying out or changing any road. When the order is made and entered of record laying out or changing any road the county court or judge thereof shall have the right to enter upon the lands of the owner and proceed with the construction of the road. All damages allowed under this chapter shall be paid out of any funds appropriated for roads and bridges, and, if no such funds exist, then damages shall be paid out of the general revenue fund of the county.

(h) The provisions of this section shall not apply to the counties of Craighead, Greene, Clay, Hempstead, Nevada, Lincoln, Cleveland, Dallas, Pike, Clark, Benton, Yell, Logan, Saline, Hot Spring, Grant, Little River, Sevier, Howard, Conway, Arkansas, Baxter, Columbia, Johnson, Calhoun, Stone, Fulton, Bradley, Faulkner, Prairie, Madison, Searcy, Marion, Lawrence, Carroll, Sharp, Newton, Randolph, White, Jackson, Van Buren, Monroe, Lafayette, Independence, Crawford, and Franklin.

History. Acts 1899, No. 200, § 4, p. 347; 1911, No. 422, § 1; C. & M. Dig., § 5249; Acts 1923, No. 611, § 1; Pope's Dig., § 6968; A.S.A. 1947, § 76-917.

Publisher's Notes. This section may be superseded by § 14-298-120.

CASE NOTES

ANALYSIS

In general.

Constitutionality.

Appeals.

Authority to condemn land.

— Hearing.

— Notice.

— Parties.

Compensation for damages.

— Allowance of damages.

— Disallowance of claims.

— Time limitation.

In General.

The 1923 amendment had the effect to leave the law, so far as it relates to the

excepted counties, as though no amendment had been made to the section. *Casey v. Douglas*, 173 Ark. 641, 296 S.W. 705 (1927).

Entry upon land condemned for highway purposes affords the proprietor an opportunity to exact payment or to require a guaranteeing deposit; if there is neither payment nor deposit, resort may be had to injunction, but should the proprietor stand by and permit the land to be occupied and the improvement to proceed until substantial road work has been done, he is relegated to the county's credit, the demand is against revenues for the year possession is taken, and the

claim is one to be paid on a parity with others recognized by law as contractual, and it is inferior to claims arising from the performance of indispensable services. *Miller County v. Beasley*, 203 Ark. 370, 156 S.W.2d 791 (1941).

Constitutionality.

This section is not invalid as providing for a taking of private property by an order of the county court for a public road without notice to the interested landowner or a determination of the necessity therefor. *Sloan v. Lawrence County*, 134 Ark. 121, 203 S.W. 260 (1918); *Crawford County v. Simmons*, 175 Ark. 1051, 1 S.W.2d 561 (1928); *State Life Ins. Co. v. Arkansas State Hwy. Comm'n*, 202 Ark. 12, 148 S.W.2d 671 (1941).

In the establishment of new roads, county courts cannot disregard an applicable provision of the Arkansas Constitution, including the provision against the taking of property without compensation or the provisions of Ark. Const., Amend. No. 11. *Casey v. Douglas*, 173 Ark. 641, 296 S.W. 705 (1927); *Independence County v. Lester*, 173 Ark. 796, 293 S.W. 743 (1927).

Power of the county to provide for payment of compensation to landowner whose land is condemned for highway purposes is limited by Ark. Const., Amend. No. 10, which prohibits making of such payment except from current revenues coming in during the year in which the order of condemnation is entered, or possibly during the year in which the land is actually taken, and such amendment must be read in connection with Ark. Const., Art. 2, § 22, which prohibits taking of private property for public use without just compensation. *Lee County v. Holden*, 82 F. Supp. 353 (E.D. Ark. 1949).

There is no requirement in the Arkansas Constitution with respect to the state taking property for strictly public use that there shall be a hearing on the question of necessity or that notice of the taking must be given. *Sloan v. Lawrence Co.*, 134 Ark. 121, 203 S.W. 260 (1918).

Appeals.

A landowner affected by an order to lay out a road has a right to appeal from such an order. *Burns v. Harrington*, 162 Ark. 162, 257 S.W. 729 (1924).

Appeal from a decision under this sec-

tion is to the circuit court. *Greig v. Crawford County*, 256 Ark. 202, 506 S.W.2d 523 (1974).

Authority to Condemn Land.

In a proceeding to establish a new road, the circuit court can exercise no greater power or authority than was within the jurisdiction of the county court. *Casey v. Douglas*, 173 Ark. 641, 296 S.W. 705 (1927).

A county court's order condemning land for state highway purposes was not void for failing to state that the proposed changes in the highway were practicable and would be for the best interest of the county and were of sufficient importance to the public to warrant payment for land taken. *Washington County v. Broyles*, 179 Ark. 733, 17 S.W.2d 872 (1929).

Action to condemn is a proceeding in rem and, following county court's orders condemning property and disallowing claim for compensation for reason of insufficient funds, chancery court had jurisdiction to restrain all persons from entering the property even though the State Highway Commission was not served with process, landowner being not limited to remedy by appeal to circuit court and injunction being not a collateral attack on the judgment of the county court. *Arkansas State Hwy. Comm'n v. Hammock*, 201 Ark. 927, 148 S.W.2d 324 (1941).

Provision for opening road by petition is additional method, and county court may open a new road without petition. *Prewitt v. Warfield*, 203 Ark. 137, 156 S.W.2d 238 (1941).

The action of taking land is not completed when the judgment of condemnation is rendered; it requires an order of condemnation followed by entry upon the land. *Miller County v. Beasley*, 203 Ark. 370, 156 S.W.2d 791 (1941).

— Hearing.

In condemning property for highway purposes, a hearing upon the question of necessity is not essential. *Arkansas State Hwy. Comm'n v. Hammock*, 201 Ark. 927, 148 S.W.2d 324 (1941).

— Notice.

Where the county court ordered the widening of a public road and condemned a strip of private property for such purpose, the recording of the court order and

the actual taking of the property thereunder were, in the very nature of things, actions of such publicity as to constitute notice, and the property owner was given 12 months within which to apply to the county court for an allowance of compensation, when a hearing would then be given on that question. *Sloan v. Lawrence Co.*, 134 Ark. 121, 203 S.W. 260 (1918).

This section is ostensibly defective in that it makes no provision for the giving of notice to the landowner whose property is being taken, notice being essential as the landowner is entitled to a hearing upon the issue of compensation. Actual entry upon the land, while not being notice of the extent to which the land is being taken, supplies the required notice to the landowner; however, the right to compensation is lost if the owner fails to file his claim within one year after the entry. *Arkansas State Hwy. Comm'n v. Cook*, 233 Ark. 534, 345 S.W.2d 632 (1961); *Arkansas State Hwy. Comm'n v. Montgomery*, 237 Ark. 857, 376 S.W.2d 662 (1964) (decisions prior to § 14-298-120).

The burden is on the State Highway Commission claiming under a county court order to show that the affected landowner had notice of the order. *Arkansas State Hwy. Comm'n v. Jerry*, 241 Ark. 591, 408 S.W.2d 864 (1966).

— Parties.

Where the county court makes an order establishing a road through certain lands, a citizen and taxpayer owning lands taken by the road may make himself a party to the proceeding and appeal from the orders of the court. *McMahan v. Ruble*, 135 Ark. 83, 204 S.W. 746 (1918).

State is real party in interest in action filed by State Highway Commission for condemnation of land for highway, though this section makes it a duty on the county to provide for compensation for the land taken, as real test in determination as to whether state is a real party in interest is not necessarily the financial interest involved on the part of the state, but whether the state gets the benefit of the decree of condemnation, and since highway is for the benefit of the state as a whole, the state is the real party in interest. *Lee County v. Holden*, 82 F. Supp. 353 (E.D. Ark. 1949).

Compensation for Damages.

An order condemning land to open up a highway to connect an established road with a proposed private toll-bridge is not for the benefit of the bridge company but for the benefit of the public, and the county is responsible for the compensation found to be due owners for the right-of-way for the public road. *McClintock v. Bovay*, 163 Ark. 388, 260 S.W. 395 (1924).

Condemnation of lands for highway purposes by the county court creates ipso facto a valid claim for compensation in favor of the landowner against the county. *Independence County v. Lester*, 173 Ark. 796, 293 S.W. 743 (1927).

An order of the county court for a change in a road was not void as a taking of private property for public use without compensation, since payment for taking private property need not precede the taking of the property. *Crawford County v. Simmons*, 175 Ark. 1051, 1 S.W.2d 561 (1928).

Judgment of the county and circuit courts attempting to condemn and take lands for new road in the face of undisputed evidence that there was not, and there would not be for a number of years, money to pay for the lands was an attempt to take private property for public use without compensation. *Dowdle v. Raney*, 201 Ark. 836, 147 S.W.2d 42 (1941).

County court had no right to condemn property and at the same time disallow compensation by reason of insufficient funds with which to pay the landowner's claim. *Arkansas State Hwy. Comm'n v. Hammock*, 201 Ark. 927, 148 S.W.2d 324 (1941).

This section imposes upon the county the duty of paying compensation for lands condemned for highway purposes. *Lee County v. Holden*, 82 F. Supp. 353 (E.D. Ark. 1949).

The enjoinder of the State Highway Commission from enlarging an existing right-of-way without compensating the abutting landowners is proper. *Arkansas State Hwy. Comm'n v. Cook*, 236 Ark. 251, 365 S.W.2d 463 (1963).

In the state's exercise of its right of eminent domain without notice to the landowner, the individual's right to his day in court is on the question of compensation for the property taken and not its appro-

priation. *Arkansas State Hwy. Comm'n v. Scott*, 238 Ark. 883, 385 S.W.2d 636 (1965).

An actual taking of land is not necessary to be entitled to damages. A land-taking without proper notice, even though the land is not used, gives rise to an action for damages. *Greig v. Crawford County*, 256 Ark. 202, 506 S.W.2d 523 (1974).

If the landowner in a condemnation suit pursues the issue of damages, he does not thereby waive the right to challenge the validity of the order. *Greig v. Crawford County*, 256 Ark. 202, 506 S.W.2d 523 (1974).

— Allowance of Damages.

Where the owner of land taken for a public highway conveyed the land and assigned his claim for damages to the grantee, the latter could recover the damages. *Johnson v. Washington County*, 179 Ark. 1116, 20 S.W.2d 179 (1929).

Claim for damage for taking land for public use must be paid out of the road and bridge fund, if there is sufficient money in the fund to do so; otherwise the county court is authorized to use the money in the general revenue fund. *Washington County v. Day*, 197 Ark. 1081, 126 S.W.2d 602 (1939).

Landowners could not be required to accept a warrant in payment of their judgment for taking their lands for public purposes on a fund which showed a large net deficit, but they could require that a warrant be issued payable out of an available fund containing a net balance sufficient to pay their adjudicated claim. *Washington County v. Day*, 197 Ark. 1081, 126 S.W.2d 602 (1939).

Payment for lands taken for highway purposes or damaged incidentally must be from revenues of the fiscal year in which the obligation accrues. *Miller County v. Beasley*, 203 Ark. 370, 156 S.W.2d 791 (1941).

Where the State Highway Commission secured an order in the circuit court condemning land for highway purposes and landowner continued to occupy the land, planting a crop, and many months thereafter the commission took possession of the land and constructed the highway thereby destroying the crop, the damage of the landowner for normal and natural use of his land was to be calculated as of

the date of actual entry rather than as of date of the county court order. *State Hwy. Comm'n v. Holden*, 217 Ark. 466, 231 S.W.2d 113 (1950).

Damage to contiguous land in a condemnation action was held to be a question for the jury, and it is error to inform jury that damages cannot accrue upon land not actually taken by condemnation. *Greig v. Crawford County*, 256 Ark. 202, 506 S.W.2d 523 (1974).

— Disallowance of Claims.

Property owner enjoined by decree from interfering with land condemned for highway purpose, whose claim for damages was disallowed by the county court, having a complete and adequate remedy by appeal, could not maintain an action for damages in circuit court. *Arkansas State Hwy. Comm'n v. Means*, 192 Ark. 628, 93 S.W.2d 314 (1936).

Attempt by county court to appropriate lands for new road by allowing the owners damages in the sum of one and one-half times the assessed value of the lands was an arbitrary allowance contrary to this section. *Dowdle v. Raney*, 201 Ark. 836, 147 S.W.2d 42 (1941).

— Time Limitation.

Where the county court, without notice to landowners, entered an order in June, 1924 condemning land for a public road but made no attempt until January, 1926 to put the order into effect, at which time the road was surveyed and laid out, claims of landowners for damages filed in April, 1926 were not barred by the one-year limitation, since the owners were not charged with notice of the order of condemnation until the county took their property. *Greene County v. Hayden*, 175 Ark. 1067, 1 S.W.2d 803 (1928).

Although order was dated March 17, 1928, where it was not filed with clerk until September 28, 1928, landowner had one year from the latter date to file a claim for damages. *Hempstead County v. Gilbert*, 182 Ark. 280, 31 S.W.2d 297 (1930).

In resolving the question as to whether a claim against the county for damages occasioned by the widening of the roadbed of a highway would be barred by the one-year statute of limitations where on April 10, 1956, the county court entered an order condemning the right-of-way and in

April or May of 1956 plaintiffs' land was actually entered on and the entire work completed approximately in September of 1957, but plaintiffs did not file their claim until November 19, 1957, the argument that the statute of limitations did not begin to run until the extent of plaintiff's damages could be ascertained would not be pertinent, since the extent of eventual loss was demonstrated early in May of 1956, the plans of the highway commission being detailed, and even the physical grading being completed more than a year before the claim was filed, the insurmountable obstacles necessary to justify a rule indefinitely postponing a running of limitations thus not being present. *Hot Spring County v. Fowler*, 229 Ark. 1050, 320 S.W.2d 269 (1959).

The fact that a county judge advised a party to wait until a highway was completed before trying to settle for the damage to be done, stating further his belief that there would be plenty of time to settle after the road was completed, was insufficient to give rise to an estoppel, the judge not promising the county would not plead the statute of limitations and the judge not being able by a casual conversation in the street to bind the county. *Hot Spring County v. Fowler*, 229 Ark. 1050, 320 S.W.2d 269 (1959).

The burden of proving actual notice to a landowner is on the State Highway Commission when there is no payment of compensation or publication of notice, and this burden is not met by evidence of ditching and fencing when such evidence does not indicate where the ditches or fences were, for improving and paving an existing road is insufficient to put adjoining landowners on notice that additional lands were taken so as to start the one year statute of limitations for filing claims for taking lands by condemnation. *Arkansas State Hwy. Comm'n v. Dean*, 236 Ark. 484, 367 S.W.2d 107 (1963).

Ditching and laying tile by the State

Highway Commission within a 5 1/2-foot strip belonging to landowners was such an entry as would constitute notice of the taking of the property, and was not merely a temporary interruption of proprietary use as alleged by the landowners, so as to commence the running of the one-year statutory limitation for filing claims for just compensation. *Arkansas State Hwy. Comm'n v. Montgomery*, 237 Ark. 857, 376 S.W.2d 662 (1964).

In the absence of any notice of the condemnation the 12 months from the date of the order of taking for the landowner to file his claim means 12 months from the actual entry on the land. *Arkansas State Hwy. Comm'n v. Gladden*, 238 Ark. 988, 385 S.W.2d 934 (1965).

Where record affirmatively shows, that landowners knew their land was being taken for highway purposes more than 12 months before the claim was filed, their claim was properly barred by the statute of limitations. *Runyan v. Clark County*, 240 Ark. 543, 400 S.W.2d 651 (1966).

The one year statute of limitation is not set in motion until the landowner has notice or knowledge of the order condemning the property. *Arkansas State Hwy. Comm'n v. Marlard*, 247 Ark. 710, 447 S.W.2d 329 (1969).

Although a landowner has one year in which to protest the taking of his land for value by the state, the year does not begin to run until he is served with notice by legal process or until an entry is made by the condemning agent. *Arkansas State Hwy. Comm'n v. French*, 246 Ark. 665, 439 S.W.2d 276 (1969).

This section allows one year to file claim for condemnation damages. *Greig v. Crawford County*, 256 Ark. 202, 506 S.W.2d 523 (1974).

Cited: *Hot Spring County v. Bowman*, 229 Ark. 790, 318 S.W.2d 603 (1958); *Borden v. Armstrong*, 240 Ark. 1050, 403 S.W.2d 731 (1966).

14-298-122. Opening or altering roads in counties voting for road tax — Notice by actions.

(a) The purpose of this section is to establish a rule defining what actions have supplied the requisite notice to affected landowners of the condemnation of their property by county court orders effected pursuant to § 14-298-121.

(b) Entry and notice shall mean:

(1) Any construction work performed on a road, street, or highway where the right-of-way thereof condemned by the county court is on a new location was entry and was notice of the existence of the condemnation order, from the date of performance of the work, to the person owning, prior to the court order, the property entered upon;

(2) Where the right-of-way condemned by a county court order included an existing road, street, or highway, construction work on the right-of-way which was more than the mere resurfacing or reconditioning of the existing road, street, or highway, was entry and was notice of the existence of the condemnation order to the person owning, prior to the court order, the property entered upon.

History. Acts 1963, No. 185, §§ 1, 2.

CASE NOTES**Prior to Court Order.**

Contention that words "prior to the court order" as contained in subdivision (b)(2) applied only to person owning land before entry of court order but who dis-

posed of land before order was made was without merit as being unreasonable so as to make this section meaningless. *Arkansas State Hwy. Comm'n v. Triplett*, 239 Ark. 354, 389 S.W.2d 439 (1965).

14-298-123. Replacement of washed-out road.

(a) When any county road may be injured or destroyed by washing of any lake, river, or creek, it shall be the duty of the overseer of the road district in which the injury or destruction may occur to immediately notify the judge of the county court in writing of the nature and extent of the injury.

(b) If the judge shall be satisfied that the road has been injured or destroyed to such extent as to inconvenience the traveling public, the judge shall appoint (3) viewers. They may, if in their judgment it is necessary, take with them a competent surveyor and proceed to view and survey a new road upon such ground as will accommodate the traveling public.

(c) The viewers shall determine the compensation to be allowed the owners of the property sought to be appropriated, at its true value, and the damages occasioned by the new road and shall make a report of their doings in the manner pointed out in this chapter as the duties of viewers of new roads.

(d) Appeals may be taken from the appointment and orders of the judge and from the assessment allowed by the viewers as a jury to the

owners of the property, in the manner provided by this chapter, within the time allowed by law, after the first regular term of the court thereafter held.

(e) The appointment of viewers and order of the judge provided in this chapter shall be recorded in the records of the court.

(f) The county court shall be governed in the reception, approving, and recording of the report of viewers, in all respects, as is prescribed in the case of new roads, except no notice of the destruction or injury to the road shall be required except as required by this section.

(g) All costs, damages, and expenses arising under the provisions of this section shall be paid out of the county treasury on the warrant of the county clerk.

History. Acts 1871, No. 26, § 59, p. 56; C. & M. Dig., § 5248; Pope's Dig., § 6967; A.S.A. 1947, § 76-919. **Publisher's Notes.** This section may be superseded by § 14-298-120.

CASE NOTES

Claims by Landowners.

Fact that public road was destroyed did not give landowner over whose land public traveled after the destruction a basis of

claim against the county where county court did not establish a road over the landowner's land. *Craig v. Greenwood* Dist., 91 Ark. 274, 121 S.W. 280 (1909).

14-298-124. Altering public roads on private land.

(a) If any person through whose land a public road is or may be established shall be desirous of turning the road through any other part of his land, that person shall, by petition, apply to the county court to permit him to turn the road through any other part of his land on as good ground and without increasing the distance to the injury of the public. Upon presentation of the petition, the person shall present a certificate from the overseer of the road, endorsed by the approval of a majority of the road hands working under the overseer to the effect that the proposed change will not materially increase the distance to the injury of the public, together with their opinions in writing as to the utility or practicability of the alteration.

(b)(1) The court shall declare the new road a public highway if:

(A) The certificate of the overseer shall show to the court that the prayer of the petition is reasonable and the alteration will not place the road on worse ground, or increase the distance to the injury of the public; and

(B) The court is satisfied that the new road will be opened by the petitioner a legal width and in all respects made as good as the old road was for the convenience of travelers; and

(C) In the opinion of the court, the petition shall be just and reasonable; or

(2) In the absence of a certificate from the overseer, a petition is signed or endorsed by two-thirds ($\frac{2}{3}$) of the road hands, subject to road

duty on the road, then the court shall order the change and declare the new road a public highway.

(c) A person desiring the alteration provided in this section shall pay all the cost incident to the proceedings, and no damages shall be allowed under the provisions of this section by reason of any such change to any petitioner.

History. Acts 1871, No. 26, § 57, p. 56; 1897 (Ex. Sess.), No. 10, §§ 1, 2, p. 33; 1907, No. 427, § 1, p. 1147; C. & M. Dig., § 5246; Pope's Dig., § 6965; A.S.A. 1947, § 76-916.

Publisher's Notes. This section may be superseded by §§ 14-298-120 or 14-297-101 et seq.

CASE NOTES

Authority to Change.

One cannot change a public road across his land without authority of the county court. McKibbin v. State, 40 Ark. 480 (1883).

Cited: Arkansas State Hwy. Comm'n v. Scott, 238 Ark. 883, 385 S.W.2d 636 (1964).

14-298-125. Federal authority.

(a) The county court of each county in the State of Arkansas is authorized to grant the United States of America the right to close, inundate, destroy, relocate, alter, or appropriate any county highway in the county in connection with the construction, development, operation, or maintenance of any flood control or other public project being constructed, operated, developed, or maintained by the United States of America, upon such terms and conditions and for such consideration as the county court may determine to be just and proper.

(b) The county court of each county of the State of Arkansas shall have power to execute any and all contracts, deeds, easements, and other instruments of conveyance as may be required in or convenient to the exercise of the powers granted in this section.

History. Acts 1949, No. 181, §§ 1, 2; A.S.A. 1947, §§ 76-924, 76-925.

CHAPTER 299

MAINTENANCE AND REPAIR OF COUNTY HIGHWAYS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. VOLUNTARY AGREEMENTS FOR ROAD IMPROVEMENTS.

RESEARCH REFERENCES

ALR. Governmental liability to advertiser arising from obstruction of public view of sign on account of growth of vegetation in public way. 21 ALR 4th 1309.

Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR 4th 674.

State or local governmental unit's liability for injury to private highway construction worker based on its own negligence. 29 ALR 4th 1188.

Personal injury liability of civil engineer for negligence in highway or bridge construction or maintenance. 43 ALR 4th 911.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

14-299-101. Classification of roads.

14-299-102. Roadwork priority according to classification.

14-299-101. Classification of roads.

All public roads and highways running most centrally through the county and most used by the public shall be designated as first-class roads and all other public roads and highways as second-class roads.

History. Acts 1899, No. 200, § 10, p. 347; C. & M. Dig., § 5225; Pope's Dig., § 6939; A.S.A. 1947, § 76-1020.

14-299-102. Roadwork priority according to classification.

All roads of the first class shall be first worked, and then the second-class roads shall be worked as the court may class and order.

History. Acts 1899, No. 200, § 10, p. 347; C. & M. Dig., § 5225; Pope's Dig., § 6939; A.S.A. 1947, § 76-1020.

SUBCHAPTER 2 — VOLUNTARY AGREEMENTS FOR ROAD IMPROVEMENTS**SECTION.**

14-299-201. Filing the agreement — Contents.

14-299-202. Signer's failure to pay pro rata costs.

14-299-203. Liability of all area landowners.

SECTION.

14-299-204. Board of commissioners — Determination of cost.

14-299-205. Financing by landowners.

14-299-201. Filing the agreement — Contents.

Whenever the landowners of one (1) or more adjoining townships in any county or in a certain described portion thereof, amounting to three-fourths ($\frac{3}{4}$) of the number of landowners in the territory described in the petition, shall file with the county court of the county a written statement and agreement signed by the landowners wherein they represent to the court that they have voluntarily agreed among themselves to improve certain county roads or parts thereof in the township or in the area described in the agreement, by contributing in cash the necessary funds therefor, and that the costs of the proposed improvements shall not exceed a total sum to be stated in the agreement, and that the costs shall be paid pro rata by the signers of the agreement in the proportion that the assessed value of their land shall bear to the total cost of the improvements, then the statement and agreement shall be spread in full upon the records of the county court. Thereafter, each and every owner and signer of the agreement shall be bound by the terms of the agreement and shall be personally liable for his proportionate part of the costs of the improvement as set out in this section.

History. Acts 1949, No. 294, § 1;
A.S.A. 1947, § 76-1030.

14-299-202. Signer's failure to pay pro rata costs.

If any signer of the agreement fails to pay his part of the costs according to the terms of the agreement, the board of commissioners created in § 14-299-204 is authorized to bring suit against the owner, his successors, and assigns for the recovery of the amount due. Until that amount is paid, it shall constitute a lien upon the land of the delinquent owner in the township or area affected.

History. Acts 1949, No. 294, § 1;
A.S.A. 1947, § 76-1030.

14-299-203. Liability of all area landowners.

When any such agreement has been entered of record by the county court as directed in §§ 14-299-201 and 14-299-202, then all the owners of land in the township or in the area affected, whether they have signed the statement and agreement or not, shall become liable to pay their proportionate part of the costs of the improvement to the same extent, in the same manner, and subject to the same procedure to collect the costs, as applies to the signers of the agreement.

History. Acts 1949, No. 294, § 2;
A.S.A. 1947, § 76-1031.

14-299-204. Board of commissioners — Determination of cost.

(a) The statement and agreement referred to in §§ 14-299-201 and 14-299-202 must contain the names of three (3) of the signers thereto who shall constitute a board of commissioners to have supervision, direction, and control of the improvement. It shall be their duty to see that the improvement is properly made.

(b) The board of commissioners shall first determine the cost of the proposed improvement and then shall calculate and determine the pro rata cost of each landowner. Each landowner shall be required to pay that amount to the board of commissioners within sixty (60) days after having been notified in writing by the board of the amount of his payment.

(c) If the improvement cannot be completed for the sum first determined by the board of commissioners and if the total cost as first determined by the board shall be less than the total amount of the cost of the improvement fixed in the agreement referred to in § 14-299-203, then the board is authorized to require additional pro rata payment from the various landowners for the purpose of completing the improvement. In no event shall the total cost of the improvement exceed the amount fixed in the agreement.

History. Acts 1949, No. 294, § 3;
A.S.A. 1947, § 76-1032.

14-299-205. Financing by landowners.

(a) It is the purpose and intent of this subchapter that:

(1) No bonds shall be issued by the board of commissioners;

(2) No money shall be borrowed and no interest shall be paid, but the entire cost of the improvement shall be paid by the cash payments from the landowners as provided for in this subchapter;

(3) Seventy-five percent (75%) of the total amount of payments due to be made by the various landowners shall be paid to the board of commissioners before the improvements provided for in this subchapter shall be begun.

(b) It is not the purpose of this subchapter to impair the power and authority given the county court by the Constitution and laws of this state over roads and highways of the county.

History. Acts 1949, No. 294, § 4;
A.S.A. 1947, § 76-1033.

CHAPTER 300

COUNTY BRIDGES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. BUILDING BRIDGES.
3. HIGHWAY BRIDGES OVER NAVIGABLE STREAMS.

RESEARCH REFERENCES

ALR. Liability of governmental entity for injury or death resulting from design, construction, or failure to warn of narrow bridge. 2 ALR 4th 635.

Personal injury liability of civil engineer for negligence in highway or bridge construction or maintenance. 43 ALR 4th 911.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

14-300-101. Purchase of private bridges by county.

Effective Dates. Acts 1899, No. 204, § 2: effective on passage.

14-300-101. Purchase of private bridges by county.

Where a bridge across any stream in this state is owned by private parties and the bridge is, in the opinion of the county court of the county in which it is situated, a public necessity or convenience, the county court is empowered and authorized to purchase the bridge when an appropriation has been made therefor by the quorum court.

History. Acts 1899, No. 204, § 1, p. 388; C. & M. Dig., § 832; Pope's Dig., § 969; A.S.A. 1947, § 76-1517.

SUBCHAPTER 2 — BUILDING BRIDGES

SECTION.

- 14-300-201. Classification of bridges on public roads.
- 14-300-202. Building methods generally — Bridges 60 feet or less in length.
- 14-300-203. Building bridges of first class.
- 14-300-204. Bond of contractor.
- 14-300-205. Building bridges of second class.

SECTION.

- 14-300-206. Building bridges of third class.
- 14-300-207. Building bridges in counties voting for three-mill road tax.
- 14-300-208. Persons required to work on bridges.

Effective Dates. Acts 1875, No. 126,
§ 8: effective on passage.

14-300-201. Classification of bridges on public roads.

The bridges on the public roads of this state shall be divided into three (3) classes:

(1) Bridges over sixty feet (60') in length, exclusive of abutments, shall be bridges of the first class;

(2) Bridges of not less than thirty feet (30') nor more than sixty feet (60') in length, exclusive of abutments, shall comprise the second class; and

(3) All bridges less than thirty feet (30') in length shall comprise the third class.

History. Acts 1875, No. 126, § 1, p. 258; C. & M. Dig., § 825; Pope's Dig., § 962; A.S.A. 1947, § 76-1509.

14-300-202. Building methods generally — Bridges 60 feet or less in length.

(a) Bridges of the first, second, and third class shall be built in the manner provided in this subchapter.

(b) It shall be left to the discretion of the county court to determine when bridges sixty feet (60') or less in length shall be built at the cost of the county.

History. Acts 1875, No. 126, § 2, p. 258; C. & M. Dig., § 826; Pope's Dig., § 963; A.S.A. 1947, § 76-1510.

14-300-203. Building bridges of first class.

(a) Bridges of the first class shall be built at the expense of the county in which they are situated.

(b) It shall be the duty of the county court, when it has been determined to build any bridge of the first class, to appoint a commission of three (3) competent persons who are property holders of the county, whose duty it shall be to make a personal examination of the place where the bridge is needed and to report to the court with the plans and specifications best adapted to the ground where the bridge is to be erected.

(c) If the court determines that a bridge shall be built, and the plans and specifications have been adopted, it shall be the duty of the court to give notice by posting three (3) notices at the courthouse and one (1) at each precinct in the county. This notice shall set forth the plans and specifications of the bridge, with the place where it is to be built and the time when it is to be completed.

(d) The contract for the bridge shall be let at public vendue, at the courthouse door, to the lowest and best bidder.

History. Acts 1875, No. 126, § 3, p. 258; C. & M. Dig., § 827; Pope's Dig., § 964; A.S.A. 1947, § 76-1511.

CASE NOTES

ANALYSIS

County judge.
Letting of contracts.
Presumptions.

County Judge.

Although appropriation is to be made by the levying court, the judge alone can build the bridge. *Hilger v. Chrisp*, 98 Ark. 490, 136 S.W. 660 (1911).

Where county judge in vacation entered into contract with drainage district to reimburse it for bridge, and contract was never ratified by county court, claim of drainage district was properly disallowed. *Ross Drainage Dist. v. Clark County*, 153 Ark. 175, 239 S.W. 740 (1922).

Letting of Contracts.

All contracts for erecting or repairing public bridges in any county, or for materials therefor, shall be given to lowest re-

sponsible bidder under such regulations as may be provided by law. *Fones Hdwe. Co. v. Erb*, 54 Ark. 645, 17 S.W. 7, 13 L.R.A. 353 (1891).

With respect to Carroll County, any irregularities in letting contracts were validated by Acts 1921, No. 187. *Carroll County v. Reeves Constr. Co.*, 154 Ark. 434, 242 S.W. 821 (1922).

Presumptions.

In an action against a county to recover for building a bridge, the presumption is that money to build the bridge has been appropriated. *Howard County v. Lambright*, 72 Ark. 330, 80 S.W. 148 (1904).

Presumption is that the county court did not exceed its authority in making the contract. *Watkins v. Stough*, 103 Ark. 468, 147 S.W. 443 (1912); *Woodruff County v. Road Imp. Dist. No. 14*, 159 Ark. 374, 252 S.W. 930 (1923).

14-300-204. Bond of contractor.

(a) The person obtaining the contract shall proceed at once to give bond in the amount of his bid, with good and sufficient security to be approved by the court, which bond shall set forth the time in which the bridge shall be completed.

(b) When the bridge has been finished or when the time in which it was to be completed has expired, the court shall instruct the commissioners who reported the plans of the bridge to make personal examination and report.

(1) If it shall appear that the bridge has been built in accordance with the plans and in the time agreed upon, the court shall proceed to make an appropriation to pay for the bridge.

(2) However, if it shall appear that the bridge has not been built according to the plans and in the time specified, the bond of the contractor shall be declared forfeited, and the court shall proceed to collect the bond.

(3) If it shall appear that the contractor has been delayed in the performance of his contract by providential hindrances, the court may allow him a reasonable length of time in which to complete the bridge.

History. Acts 1875, No. 126, § 4, p. 258; C. & M. Dig., § 828; Pope's Dig., § 965; A.S.A. 1947, § 76-1512.

Cross References. Form of bonds, § 22-9-401 et seq.

CASE NOTES

Rights of Contractor.

Where a contract for constructing county bridges is let to the lowest bidder as required by law, the contract price is the measure of the contractor's rights and not the customary cash market price for materials furnished or work done, and

unless fraud or collusion to increase the price by reason of payment in depreciated warrants is shown, the contractor is entitled to recover the contract price. *Watkins v. Stough*, 103 Ark. 468, 147 S.W. 443 (1912).

14-300-205. Building bridges of second class.

It shall be the duty of the overseer of roads to cause to be built all bridges of the second class in the following manner:

(1) When it becomes necessary to build a bridge of the second class in any road district, the overseer of the district shall warn the hands in a manner provided by law for warning road hands, shall supply them with the necessary tools, and shall proceed to build the bridge on the plans he deems best adapted to the place;

(2) The county court shall appropriate money sufficient to pay for the lumber to floor and bannister the bridge;

(3) When any bridge of the second class is ordered built at the expense of the county, the work shall be done and the bridge erected in all respects as is provided for in § 14-300-203.

History. Acts 1875, No. 126, § 5, p. 258; C. & M. Dig., § 829; Pope's Dig., § 966; A.S.A. 1947, § 76-1513.

14-300-206. Building bridges of third class.

All bridges of the third class shall be built under the direction of the overseer of the roads on the plan he may deem best adapted to the place where needed, without expense to the county, except that the county shall furnish plank for all bridges over ten feet (10') in length.

History. Acts 1875, No. 126, § 6, p. 258; C. & M. Dig., § 830; Pope's Dig., § 967; A.S.A. 1947, § 76-1514.

14-300-207. Building bridges in counties voting for three-mill road tax.

(a) All bridges of the first class shall be built and repaired by the county as provided in §§ 14-300-203 and 14-300-204.

(b)(1) All bridges of the second class shall be built and repaired by the road commissioner, the overseers, and road hands of the district in

which the bridges are situated or to be built, under the direction of the county court.

(2) The cost of building or repairing second-class bridges shall be paid out of the road and bridge tax in the county treasury to the credit of the district.

(3)(A) However, the county court may, in its discretion, let the building of second-class bridges out on contract to the lowest bidder, and, in case the court so decides, the road commissioner shall make a personal examination of the place where the bridge is needed and report to the court, or the judge thereof in vacation, with the plans and specifications best adapted to the ground where the bridge is to be constructed.

(B) If the court or judge shall adopt the plans and specifications submitted by the commissioner, it shall be the duty of the court or judge to give notice by publishing for thirty (30) days in some newspaper, published in the county, if there is one. If there is no newspaper, then notice shall be given by posting written or printed notices in each township in the county, setting forth the plans and specifications of the bridge, with the place where it is to be built and the time when it is to be completed.

(C) The contract for the bridge of the second class shall be let at the courthouse door to the lowest and best bidder.

(c) All bridges of the third class shall be repaired and built by the overseer, under the direction of the road commissioner, and their costs shall be paid out of the road and bridge tax fund in the county treasury to the credit of the district in which the bridge shall be built or constructed.

History. Acts 1899, No. 200, § 11, p. 347; C. & M. Dig., § 5266; Pope's Dig., § 6994; A.S.A. 1947, § 76-1515.

14-300-208. Persons required to work on bridges.

All male inhabitants of this state between the ages of eighteen (18) and forty-five (45) years shall be subject to be warned to work on bridges of the second and third class, and upon refusal, shall be subject to all the fines attached to the general law.

History. Acts 1875, No. 126, § 7, p. 258; C. & M. Dig., § 831; Pope's Dig., § 968; A.S.A. 1947, § 76-1516.

SUBCHAPTER 3 — HIGHWAY BRIDGES OVER NAVIGABLE STREAMS

SECTION.

14-300-301. Construction.

14-300-302. Board of commissioners.

14-300-303. Award of contract.

SECTION.

14-300-304. Certified check to accom-
pany bid.

14-300-305. Bond of contractor.

Effective Dates. Acts 1891, No. 16,
§ 5: effective on passage.

CASE NOTES

Constitutionality.

So much of this subchapter as provides
for a letting of the contract by a plan of
advertising for specifications and bids to-

gether is unconstitutional. *Fones Hdwe.
Co. v. Erb*, 54 Ark. 645, 17 S.W. 7, 13
L.R.A. 353 (1891).

14-300-301. Construction.

This subchapter shall not conflict with the operation of the laws
relating to bridges embraced in §§ 14-300-201 — 14-300-206,
14-300-208 and 14-319-101.

History. Acts 1891, No. 16, § 5, p. 14;
C. & M. Dig., § 838; Pope's Dig., § 974;
A.S.A. 1947, § 76-1522.

14-300-302. Board of commissioners.

Whenever a highway bridge is to be built by any county in this state
across a navigable stream over four hundred feet (400') in width, it
shall be the duty of the county court of that county to appoint a com-
mission of two (2) competent persons who are property holders and
taxpayers of the county and who, in conjunction with the county judge,
shall constitute a board of commissioners whose duty it shall be to
locate the bridge. When the bridge is so located, the board shall give at
least thirty (30) days' notice, by publication in one (1) or more newspa-
pers published in the county, that they are ready to receive plans,
specifications, and bids for the erection of the bridge.

History. Acts 1891, No. 16, § 1, p. 14;
C. & M. Dig., § 834; Pope's Dig., § 970;
A.S.A. 1947, § 76-1518.

CASE NOTES

In General.

The county judge may build a bridge only in accordance with the law and must appoint a commission of two persons, who

with himself would constitute a board of commissioners to build the bridge. *Mullins v. City of Little Rock*, 113 Ark. 590, 168 S.W. 1074 (1914).

14-300-303. Award of contract.

After receiving plans, specifications, and bids, the board of commissioners shall proceed, without delay, to make a careful examination thereof. The board shall determine, after taking into consideration the style, principle, and durability of each plan submitted and the character and quality of material to be furnished, who is the lowest and best bidder. Thereupon, they shall award to that bidder the contract for building the bridge. However, the commissioners shall have the right to reject any and all bids.

History. Acts 1891, No. 16, § 2, p. 14; C. & M. Dig., § 835; Pope's Dig., § 971; A.S.A. 1947, § 76-1519.

CASE NOTES

Appropriations.

The board of commissioners cannot make a valid contract unless a previous appropriation has been made by the levying court. *Fones Hdwe. Co. v. Erb*, 54 Ark. 645, 17 S.W. 7, 13 L.R.A. 353 (1891).

An appropriation for preliminary work is not an appropriation to build. *Fones Hdwe. Co. v. Erb*, 54 Ark. 645, 17 S.W. 7, 13 L.R.A. 353 (1891).

14-300-304. Certified check to accompany bid.

No bid shall be entertained by the board of commissioners unless the bid is accompanied by a certified bank check in the sum of five thousand dollars (\$5,000), with the understanding that the amount shall be forfeited to the county should the contract be awarded to the bidder and he should fail, within ten (10) days thereafter, to execute the contract and give the bond referred to in § 14-300-305.

History. Acts 1891, No. 16, § 3, p. 14; C. & M. Dig., § 836; Pope's Dig., § 972; A.S.A. 1947, § 76-1520.

14-300-305. Bond of contractor.

When a contract is awarded to any bidder, he shall be required to give a good and sufficient bond, to be approved by the commissioners, in a sum equal to twenty-five percent (25%) of the full amount of the bid, conditioned for the faithful performance of the contract within the time limited therefor.

History. Acts 1891, No. 16, § 4, p. 14;
C. & M. Dig., § 837; Pope's Dig., § 973;
A.S.A. 1947, § 76-1521.

Cross References. Conditions of bond,
§ 22-9-401 et seq.

CHAPTER 301

MUNICIPAL STREETS GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STREET IMPROVEMENTS.
3. VACATING STREETS AND ALLEYS FOR PUBLIC USE GENERALLY.
4. CLOSURE OF ALLEYS TO BUILD SCHOOLS, HOSPITALS, ORPHANAGES, OR CHURCHES.

RESEARCH REFERENCES

ALR. State or municipal towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways. 32 ALR 4th 728.

Liability of governmental entity for injury, resulting from defect or obstruction in shoulder of street or highway. 19 ALR 4th 532.

Governmental liability to advertiser arising from obstruction of public view of sign on account of growth of vegetation in public way. 21 ALR 4th 1309.

Towing, impounding, or destruction of motor vehicles parked or abandoned on streets and highways. 32 ALR 4th 728.

Private improvement of land dedicated but not used as street as estopping public rights. 36 ALR 4th 625.

Am. Jur. 56 Am. Jur. 2d, Mun. Corp., § 481.

C.J.S. 64 C.J.S., Mun. Corp., § 1653 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-301-101. City council — Powers and duties.
- 14-301-102. Dedication of streets.
- 14-301-103. Building and repair of bridges.
- 14-301-104. Opening or improving street or highway — Delinquent tax.
- 14-301-105. Grading streets or alleys — Assessment and recovery of damages.
- 14-301-106. Sidewalks, curbing, and guttering in cities of the first class — Exceptions.
- 14-301-107. Sidewalks and curbing in towns and in cities of the first and second class.
- 14-301-108. Wheelchair access.
- 14-301-109. Public foot-walk required over railroad tracks near depot.

SECTION.

- 14-301-110. Straightening or abandoning streets in cities of over 15,000 inhabitants.
- 14-301-111. Abandonment suits involving public interest.
- 14-301-112. Abandonment of unnecessary alleys in cities of the first class — Utilities as property owners.
- 14-301-113. Prohibition on adverse possession of alleys, streets, or public parks — Validity of prior deeds.
- 14-301-114. Validation of pre-1960 conveyances of streets, etc. — Prohibition on impeaching deed.
- 14-301-115. Validation of pre-1925 conveyances of land for streets.

Cross References. General power to establish and improve streets and property, § 14-54-601 et seq.

Local government reserve funds, § 14-73-101 et seq.

Effective Dates. Acts 1875, No. 1, § 95: effective on passage.

Acts 1901, No. 179, § 2: effective on passage.

Acts 1903, No. 126, § 2: effective on passage.

Acts 1907, No. 301, § 2: effective on passage.

Acts 1907, No. 426, § 2: effective on passage.

Acts 1909, No. 136, § 2: effective on passage.

Acts 1917, No. 399, § 2: approved Mar. 24, 1917. Emergency clause provided: "This act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force on and after its passage."

Acts 1927, No. 40, § 5: approved Mar. 1, 1927. Emergency clause provided: "It is now determined and hereby declared that the existence of offsets in certain cities within the operation of this act is preventing the improvement of said streets and the property abutting thereon and is retarding the growth of the community in the vicinity thereof and creating unsanitary conditions and that, therefore, this act is necessary for the immediate preservation of the public peace, health and safety and an emergency is hereby de-

clared and this act shall take effect and be in force from and after its passage."

Acts 1931, No. 210, § 2: approved Mar. 26, 1931. Emergency clause provided: "It appearing that throughout the State there are alleys and other passageways, which are not needed or extensively used for travel and which, if closed, would be used for building purposes and the public welfare would be promoted, an emergency is declared and this act is found to be necessary for the public health, peace and safety and it shall take effect and be in force from and after its passage."

Acts 1943, No. 40, § 3: approved Feb. 10, 1943. Emergency clause provided: "This act being necessary for the public health, peace and dignity of the State of Arkansas shall take effect and be in full force from and after its passage."

Acts 1981, No. 479, § 3: Mar. 13, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that cities routinely cut and repair curbs in business districts and that it would not result in increased costs if such curb repairs were performed in such manner as to allow access for wheelchairs; and that this Act is immediately necessary to provide the same. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

14-301-101. City council — Powers and duties.

The city council shall:

(1) Have the care, supervision, and control of all the public highways, bridges, streets, alleys, public squares, and commons within the city; and

(2) Cause those public highways, bridges, streets, alleys, public squares, and commons to be kept open and in repair, and free from nuisance.

History. Acts 1875, No. 1, § 7, p. 1; C. & M. Dig., § 7607; Pope's Dig., § 9702; A.S.A. 1947, § 19-3801.

CASE NOTES

ANALYSIS

In general.

Dividing curbs.

Gas stations.

Liability for personal injuries.

Limitations on city.

Parking meters.

Repairs.

Trucks.

In General.

The city council has the power to supervise and control the streets and sidewalks of the city with authority to remove any structure encroaching upon the streets. *State ex rel. Latta v. City of Marianna*, 183 Ark. 927, 39 S.W.2d 301 (1931).

A city has the power and duty to make reasonable provisions for the safety of persons and property using its streets by the enactment of ordinances, resolutions, or bylaws looking to that end, and the city council or commission or other municipal authorities have a wide discretion on such matters. *City of Ft. Smith v. Van Zandt*, 197 Ark. 91, 122 S.W.2d 187 (1938).

The city council has the care, supervision, and control of all the streets, alleys, and public places within the city and may enjoin the construction and maintaining of anything which will constitute a nuisance on public property within the city. *Arkansas-Missouri Power Corp. v. City of Rector*, 164 F.2d 938 (8th Cir. 1948).

Dividing Curbs.

Resolution authorizing construction of dividing curb along center of boulevard, making it a four lane highway and permitting crossings only at street intersections was held not arbitrary, unreasonable, or discriminatory against owner of tourist camp in center of a long block whose prospective customers would be prevented from turning to the left into his property but would have to drive to the next intersection and return. *City of Ft. Smith v. Van Zandt*, 197 Ark. 91, 122 S.W.2d 187 (1938).

Gas Stations.

There is no limitation on the power of the city council to prohibit by ordinance the maintenance of gasoline filling stations or any other automobile service stations upon the streets within the fire

limits of the city. *Sander v. City of Blytheville*, 164 Ark. 434, 262 S.W. 23 (1924).

Liability for Personal Injuries.

A city acts as government agency in its management and control of the streets and highways within its limits and is not liable to an individual for injuries sustained by reason of its negligence in keeping them in repair. *Holt v. City of Texarkana*, 168 Ark. 847, 271 S.W. 960 (1925).

Limitations on City.

A city cannot devote a street to uses and purposes foreign to that for which it was dedicated. *City of Osceola v. Haynie*, 147 Ark. 290, 227 S.W. 407 (1921).

Abutting owners of real property have a right to enjoin the council from permitting any permanent encroachment on the streets of the city where they allege and prove special injury. *Lincoln v. McGehee Hotel Co.*, 181 Ark. 1117, 29 S.W.2d 668 (1930).

Parking Meters.

Municipality did not abuse its discretion in enacting ordinance for establishing of parking meters in front of person's business even though person was deprived of suitable loading and unloading space. *City of Marianna v. Gray*, 220 Ark. 468, 248 S.W.2d 379 (1952), *aff'd*, 222 Ark. 947, 265 S.W.2d 496 (1954).

The power granted by this section did not extend to a strip of county-owned ground around the courthouse and adjacent to the streets so as to permit the city to retain all the income from parking meters maintained by it on the strip in violation of a lease of the strip from the county in which the city agreed to give the county one-half of such income. *City of Harrison v. Boone County*, 238 Ark. 113, 378 S.W.2d 665 (1964).

Repairs.

A city council has authority to make contracts for patching material and for labor to do repair work on the streets. *Connelly v. Lawhon*, 180 Ark. 964, 23 S.W.2d 990 (1930).

Trucks.

Cities have the power to pass ordi-

nances regulating the use of streets by trucks. *House v. City of Texarkana*, 225 Ark. 162, 279 S.W.2d 831 (1955).

Statutory provisions relating to motor vehicles did not repeal or supersede this section or affect the authority of city to regulate the use of streets by trucks.

House v. City of Texarkana, 225 Ark. 162, 279 S.W.2d 831 (1955).

Cited: *City of Little Rock v. Linn*, 245 Ark. 257, 432 S.W.2d 455 (1968); *Lacey v. Bekaert Steel Wire Corp.*, 619 F. Supp. 1234 (W.D. Ark. 1985).

14-301-102. Dedication of streets.

No street or alley which shall be dedicated to public use by the proprietor of ground in any city shall be deemed to be a public street or alley, or to be under the care or control of the city council, unless the dedication shall be accepted and confirmed by an ordinance specially passed for that purpose.

History. Acts 1875, No. 1, § 7, p. 1; C. & M. Dig., § 7608; Pope's Dig., § 9703; A.S.A. 1947, § 19-3802.

CASE NOTES

ANALYSIS

Acceptance.
Prescription.

Acceptance.

Where the owners of land laid out a town or an addition to a city or town upon it, platting it into blocks and lots intersected by streets and alleys, and thereafter sold lots by reference to the plat, they will be held to have dedicated the streets and alleys to the public use irrevocably, and the municipality may accept at any time and assume control over the streets and alleys. *City of Stuttgart v. John*, 85 Ark. 520, 109 S.W. 541 (1908).

Where land was platted, the streets dedicated, lots sold by reference to the plats, and the public has used the streets

for many years, the question of the city's acceptance of dedication is not important, as the dedication of it as a public way has become irrevocable, and the city can accept it at any time. *Bushmiaer v. City of Little Rock*, 231 Ark. 848, 333 S.W.2d 236 (1960).

Prescription.

Streets established by prescription need not be accepted. *Waring v. City of Little Rock*, 62 Ark. 408, 36 S.W. 24 (1896).

Where a street has been dedicated to the public by the owner, it is not necessary to show acceptance by the public to prove a continuous use by the public for a time sufficient to constitute a way by prescription. *Brewer v. City of Pine Bluff*, 80 Ark. 489, 97 S.W. 1034 (1906).

14-301-103. Building and repair of bridges.

Each city of the first and second class and incorporated town in this state shall have the power to build, construct, and keep in repair any bridge within the corporate limits thereof at the exclusive expense of that municipal corporation.

History. Acts 1901, No. 179, § 1, p. 333; C. & M. Dig., § 7563; Pope's Dig., § 9637; A.S.A. 1947, § 19-3803.

CASE NOTES

ANALYSIS

Boundary line bridge.
Improvement districts.
Indemnification.

Boundary Line Bridge.

A city had power to bind itself to pay half of the cost of a bridge which constituted its boundary line notwithstanding that half of the bridge would be without the city limits. *Greene County v. City of Paragould*, 172 Ark. 1145, 292 S.W. 153 (1927).

Improvement Districts.

The whole of a city may be included in

one improvement district for the construction of a public bridge. *Ferguson v. McLain*, 113 Ark. 193, 168 S.W. 127 (1914).

Indemnification.

Alleged contract by city to pay claims against county for damages to real estate by reason of construction of underpass in the city was held not ultra vires nor unconstitutional for involving appropriation of money in the construction of a state highway. *City of Fordyce v. Dallas County*, 195 Ark. 552, 113 S.W.2d 500 (1938).

14-301-104. Opening or improving street or highway — Delinquent tax.

(a) No street or highway shall be opened, straightened, or widened, nor shall any other improvement be made which will require proceedings to condemn private property, without the concurrence in the by-law, ordinance, or resolution directing the condemnation of two-thirds ($\frac{2}{3}$) of the whole number of members elected to council.

(b) The concurrence of a like majority shall be required to direct any improvement or repair of a street or highway, the cost of which is to be assessed on the owners of the property, unless one-half ($\frac{1}{2}$) of the owners to be charged shall petition in writing therefor.

(c) The council of any incorporated city or town may order the clerk, or other proper officer of the council, to certify under his official seal any delinquent tax which is assessed by the city or town, for opening or grading, or otherwise improving any street or alley in the city or town, to the clerk of the proper county.

(d) The clerk is required to place the tax so certified on the tax book of his county, in a separate column, and it shall be collected in a like manner as state and county taxes.

History. Acts 1875, No. 1, §§ 30, 70, p. 1; C. & M. Dig., §§ 4007, 7566, 7583; Pope's Dig., §§ 5009, 9640, 9662; A.S.A. 1947, §§ 19-3809, 19-3810.

CASE NOTES

ANALYSIS

Approval by council.
Condemnation procedure.

Approval by Council.

A resolution authorizing the condemnation of land passed unanimously by all of the members of council is valid. *Young v.*

City of Gurdon, 169 Ark. 399, 275 S.W. 890 (1925).

Condemnation Procedure.

In condemnation of private property for public use, no one has a vested right in any given mode of procedure, and all that the landowner may require is that a form of procedure may be given him with a

right of review in the courts and that a reasonable and adequate means of payment for the property shall be provided. Cannon v. Felsenthal, 180 Ark. 1075, 24 S.W.2d 856 (1930).

14-301-105. Grading streets or alleys — Assessment and recovery of damages.

(a) In all cases where any municipal corporation shall be liable for the payment of damages to the owner or occupant of any lots or grounds, by reason of the grading of any streets or alleys, or public grounds, or part thereof, the damages shall be ascertained and assessed by three (3) disinterested reputable freeholders of the city who shall be appointed as follows:

- (1) One (1) by the city or town council;
- (2) One (1) by the owner of the property injured; and
- (3) The persons thus appointed shall choose the third person.

(b) The assessors thus appointed, before entering on their duties, shall take an oath or affirmation, before some officer authorized to administer oaths, that they will well and truly, to the best of their knowledge and ability, appraise the damages which the claimant may or shall have suffered by reason of the grading, and for which the city is liable. This oath shall be filed in the office of the city clerk, and the assessors shall, within thirty (30) days after their appointment, make the assessment, and file it in the city clerk's office, where it shall be subject to the inspection of all claimants for damages. The damages assessed by them shall be by them paid out of the city treasury or tendered to the party in whose favor the damages were assessed.

(c) If the claimant refuses to appoint, the council shall appoint all three (3) of the assessors.

(d) If any person shall neglect or refuse to accept the amount so assessed, as provided in this section, and shall prosecute the city, and if by suit for damages he shall not recover more than the amount allowed by the assessors, the party so prosecuting shall pay all costs of suit.

(e) No claimant for damages shall commence any suit for damages on account of the grading or improvement until he shall have filed a claim for greater damages with the city clerk at least thirty (30) days before the commencement of the suit.

(f) No suit shall be commenced until after the assessors shall have been appointed and made return of their assessment as herein provided, nor for thirty (30) days thereafter.

(g) The city or town council, within three (3) days after the claimant shall have notified them in writing that he has appointed his assessors, shall appoint one (1) assessor on the part of the city. They shall, within five (5) days thereafter, select the third assessor and qualify him as provided in this section.

History. Acts 1875, No. 1, §§ 77, 78, p. Dig., §§ 9649-9651; A.S.A. 1947, 1; C. & M. Dig., §§ 7573-7575; Pope's §§ 19-3811, 19-3812.

RESEARCH REFERENCES

Ark. L. Rev. Expansion of Municipal Corporation Tort Liability — A Legislative Responsibility, 14 Ark. L. Rev. 313.

CASE NOTES

ANALYSIS

Change in grade line.
Damages allowed.
— Evidence.
— Set-offs.

Change in Grade Line.

A municipal corporation will be liable for damages sustained by an abutting property owner caused by a change in the established grade line of the street, but the mere establishment of a grade line is not a change in the grade line, and the city's liability is contingent on the fact that a change in the grade line has been made. *Red v. Little Rock Ry. & Elec. Co.*, 121 Ark. 71, 180 S.W. 220 (1915).

Damages Allowed.

The owner of property abutting on a street in a city or incorporated town is entitled to recover compensation for damages done to the property in lowering the grade of the street. *Dickerson v. Town of*

Okolona, 98 Ark. 206, 135 S.W. 863, 36 L.R.A. (n.s.) 1194 (1911).

Where abutting owners have made improvements with reference to established grades of the streets, if the grade is thereafter changed to the owners' damage, the city is liable therefor. *Eickhoff v. City of Argenta*, 120 Ark. 212, 179 S.W. 367 (1915).

— Evidence.

In an action against a city to collect the award of arbitrators for the overflow of plaintiff's property, the evidence was held sufficient to warrant a verdict in favor of the plaintiff. *City of Jonesboro v. Pribble*, 112 Ark. 554, 166 S.W. 576 (1914).

— Set-offs.

A city could not set off special benefits resulting to plaintiff's property against damages which resulted from the construction of the embankment. *Van Buren v. Smith*, 175 Ark. 697, 300 S.W. 397 (1927).

14-301-106. Sidewalks, curbing, and guttering in cities of the first class — Exceptions.

(a) In order to better provide for the public welfare, safety, comfort, and convenience of the inhabitants of cities of the first class, the council of any city of the first class, by ordinance, resolution, or order, shall have the power to:

(1) Compel the owners of any property abutting its streets or public squares to build, rebuild, maintain, and repair foot pavements or sidewalk improvements, curbing, and guttering there along and to designate the kind of sidewalk, curbing, and guttering improvements to be made, the kind of material to be used, the specifications to be followed, and the time within which such improvement is required to be completed; and

(2) Provide that:

(A) If the owner of the property shall fail or refuse to comply with the provisions thereof, in the manner and within the time therein

prescribed, the cities may contract with some suitable person for the construction, reconstruction, or repair of the sidewalk, curbing, or guttering, on the best terms that can be made and in the manner to be prescribed in the ordinance, resolution, or order after giving reasonable notice to the owner or agent in charge of the property of an intention to do so; and

(B) The cities may pay that person for so constructing, reconstructing, or repairing the sidewalk, curbing, or guttering and to provide that the amount so paid by the cities, together with a six percent (6%) penalty added thereto, shall constitute a charge against the owner of the property and shall be a lien on the property from the date of the commencement of the work, the charge and lien to be assignable by the city, the charge to be recovered in an ordinary suit against the owner by the city or its assignee, or the lien to be foreclosed by the city or its assignee by suit in equity in the courts having jurisdiction of suits for the enforcement of liens upon real property, for the condemnation and sale of the property for the payment of the sums so paid by the city, together with the interest, penalty, and cost of suit, the suit in equity to be brought in the manner and under the terms now provided by law for the foreclosure of property by improvement districts, so far as applicable.

(b) Nothing contained in this section shall be construed as repealing § 14-54-104, or as preventing cities of the first class from proceeding in any other manner provided by existing laws.

(c) The provisions of this section shall not apply to Polk and Carroll counties.

History. Acts 1909, No. 136, § 1, p. 419; C. & M. Dig., § 7748; Pope's Dig., § 9944; A.S.A. 1947, § 19-3806.

Cross References. General powers over sidewalks, cities of first class, § 14-54-104.

RESEARCH REFERENCES

Ark. L. Rev. Real Property — Mechanics' Lien on a Public Street, 22 Ark. L. Rev. 203.

CASE NOTES

Liability of Property Owner.

The duty imposed by this section is enforceable solely by the city, and breach of it does not create a liability of the property owner to one who is injured as a re-

sult of the defective condition of the sidewalk. *Epps v. Remmel*, 237 Ark. 391, 373 S.W.2d 141 (1963).

Cited: *City of Little Rock v. Linn*, 245 Ark. 257, 432 S.W.2d 455 (1968).

14-301-107. Sidewalks and curbing in towns and in cities of the first and second class.

(a) In order to better provide for the public welfare, safety, comfort, and convenience of the inhabitants of cities of the first and second class and of incorporated towns, the council of any such city or town, by ordinance, resolution, or order, shall have the power to:

(1) Compel the owners of any property abutting its streets or public squares to build, rebuild, maintain, and repair foot pavements or sidewalk improvements and curbing and to designate the kind of sidewalks and curbing improvements to be made, the kind of material to be used, the specifications to be followed, and the time within which the improvement is required to be completed; and

(2) Provide that:

(A) If the owner of any property shall fail or refuse to comply with the provisions thereof, in the manner and within the time therein prescribed, the cities and towns may contract with some suitable person for the construction, reconstruction, or repair of the sidewalk or curbing, on the best terms that can be made and in the manner prescribed in the ordinance, resolution, or order after giving reasonable notice to the owner or the agent in charge of the property of an intention to do so; and

(B) The cities and towns may pay that person for so constructing, reconstructing, or repairing the sidewalks and curbing and that the amount so paid by the cities and towns, together with six percent (6%) penalty added thereto, shall constitute a charge against the owner of the property and shall be a lien on the property from the date of the commencement of the work with the charge and lien to be assignable by the city and town and the charge to be recovered in an ordinary suit against the owner by the city or town or its assignee or the lien to be foreclosed by the city or town or its assignee by suit in equity in the courts having jurisdiction of suits for the enforcement of liens upon real property, for the condemnation and sale of the property for the payment of the sums so paid by the city or town, together with the interest, penalty, and cost of suit, the suit in equity to be brought in the manner and under the terms now provided by law for the foreclosure of property by improvement districts, so far as applicable.

(b) Nothing herein contained shall be construed as repealing § 14-54-104, or as preventing the cities and towns from proceedings in any manner provided by existing laws.

History. Acts 1903, No. 126, § 1, p. 211; 1917, No. 399, § 1, p. 1864; C. & M. Dig., § 7546; Pope's Dig., § 9620; A.S.A. 1947, § 19-3807. **Cross References.** General powers over sidewalks in cities of first and second class, §§ 14-54-104, 14-54-105.

RESEARCH REFERENCES

Ark. L. Rev. Real Property — Mechanics' Lien on a Public Street, 22 Ark. L. Rev. 203.

CASE NOTES

ANALYSIS

Appeals.

Curbs.

Designation of materials.

Liability for injuries.

Life tenants.

Rebuilding.

Appeals.

An appeal from a decree enforcing a lien in favor of a city for the construction of a sidewalk would be dismissed where the transcript was not filed in the Supreme Court within 20 days after the decree appealed from was rendered. *Crandell v. City of Harrison*, 105 Ark. 110, 150 S.W. 560 (1912).

Curbs.

Cities and towns are authorized to require property owners to construct and repair the curbing as part of the sidewalk. *Brizzolara v. City of Ft. Smith*, 87 Ark. 85, 112 S.W. 181 (1908).

Designation of Materials.

An ordinance was not void because it failed to designate the material of which the sidewalks should be made where that defect was supplied by a subsequent resolution designating that they should be made of cement. *Gregg v. City of Stuttgart*, 88 Ark. 597, 115 S.W. 394 (1909).

Liability for Injuries.

A municipal corporation will not be liable in damages for an injury to pedestrian who fell from sidewalk which was laid at a higher level than the curb. *Birchfield v. Diehl*, 126 Ark. 115, 189 S.W. 845 (1916).

The duty imposed by this section is enforceable solely by the city, and breach of it does not create a liability of the property owner to one who is injured as a result of the defective condition of the sidewalk. *Epps v. Remmel*, 237 Ark. 391, 373 S.W.2d 141 (1963).

Life Tenants.

A life tenant may not refuse to build or repair a sidewalk, refuse to pay for it when constructed by the city, suffer the city to foreclose its lien for the cost of such construction, and then buy the property at the foreclosure sale and so extinguish the title of the remaindermen. *Holliday v. Phillips Petroleum Co.*, 275 F. Supp. 686 (E.D. Ark. 1967).

Rebuilding.

This section is valid under the police power of the state, and a city may compel an abutting owner to rebuild a sidewalk where he already has one in front of his premises. *City of Malvern v. Cooper*, 108 Ark. 24, 156 S.W. 845 (1913).

Cited: *City of Little Rock v. Linn*, 245 Ark. 257, 432 S.W.2d 455 (1968).

14-301-108. Wheelchair access.

In any instance where a city of the first class, city of the second class, or incorporated town repairs or constructs a street curb at a corner or intersection in a business district, that city or town shall repair or construct the curb in such manner as to provide access to wheelchairs.

History. Acts 1981, No. 479, § 1;
A.S.A. 1947, § 19-3807.1.

14-301-109. Public foot-walk required over railroad tracks near depot.

The council of any city of the first or second class or of any incorporated town shall have and is vested with authority and power to require by ordinance any railroad company that has or maintains a passenger depot in the city or incorporated town in this state to construct and to maintain a public footwalk over and across its right-of-way, switches, sidetracks, and main track to its passenger depot from either or both sides of any street abutting on its right-of-way and lying opposite its passenger depot, in cases where walks have already been constructed, or required to be constructed to the right-of-way. The walks are to be uniform in kind and width with the walks with which they connect, and are to designate the width thereof, and the material of which the walk shall be constructed and maintained, and are to provide and assess penalties, fines, and forfeitures for the violation of any such ordinances.

History. Acts 1907, No. 301, § 1, p. 726; C. & M. Dig., § 7547; Pope's Dig., § 9621; A.S.A. 1947, § 19-3808.

CASE NOTES**ANALYSIS**

Liability for breach of duty.
Width of crossing.

Liability for Breach of Duty.

The defendant's track crossed a street in a certain town which street was extensively used by pedestrians as well as vehicles; it was the duty of the defendant to maintain a crossing in good repair the entire width of the street, including the sidewalks on either side of the street, and it would be liable in damages for an injury resulting to a pedestrian from a

breach of that duty. *Chicago, R.I. & P. Ry. v. Redding*, 124 Ark. 368, 187 S.W. 651, 1918D Ann. Cas. 183 (1916).

Width of Crossing.

In constructing and maintaining crossings over public roads and streets, railroad companies must anticipate the reasonable demands of the public, and where the traffic requires it, the crossing must be made available for the entire width of the road or street. *Chicago, R.I. & P. Ry. v. Redding*, 124 Ark. 368, 187 S.W. 651, 1918D Ann. Cas. 183 (1916).

14-301-110. Straightening or abandoning streets in cities of over 15,000 inhabitants.

(a) Every city which has a population of more than fifteen thousand (15,000) inhabitants as shown by the last federal census shall have the right in all cases where a street contains offsets and sufficient property is dedicated to the offsets to:

(1) Straighten the street and eliminate any one (1) or more of the offsets;

(2) Abandon, with the consent of the abutting property owners and any other persons directly interested, such part of the property for-

merly used as a street which shall not be within the line of the street as straightened.

(b) When any person owning property abutting any part of the property proposed to be abandoned as a street shall present to the city council his petition praying that any property be abandoned as a street, the city council shall by resolution direct the city clerk to give notice by a publication one (1) time a week for two (2) weeks in some newspaper published in the county in which the city may lie. To advise the property owners affected that on a day named in the notice the council will hear the petition and determine whether the property should be abandoned as a street and whether all abutting property owners and other persons directly interested have consented to the abandonment. At the meeting named in the notice, all property owners affected shall be heard before the council, which shall determine whether the property should be abandoned and whether all abutting property owners and other persons directly interested have consented to the abandonment. The determination and finding of the council shall be conclusive unless within thirty (30) days thereafter suit is brought to review its action in the chancery court of the county where the city lies. In determining whether all abutting property owners and other persons directly interested have consented to the abandonment, the council and the chancery court shall be guided by the record of deeds in the office of the recorder of the county and shall not consider any unrecorded instrument.

(c) If the council finds that the property should be abandoned as a street and that all abutting property owners and other persons directly interested have consented to the abandonment, the finding shall be expressed in an ordinance which shall have all of the force and effect of a judgment. Thereupon, the absolute ownership of the property abandoned shall vest in the owners of the fee simple title to the property free from the former easement of the city therein for public use as a street.

History. Acts 1927, No. 40, §§ 1-3, p. 117; Pope's Dig., §§ 10028-10030; A.S.A. 1947, § 19-3813 — 19-3815.

RESEARCH REFERENCES

Ark. L. Rev. Real Property — Mechanics' Lien on a Public Street, 22 Ark. L. Rev. 203.

CASE NOTES

Applicability.

This section relates only to cities having population of more than 15,000 inhabitants; therefore it afforded no ground for dismissal of action to enjoin enforcement

of ordinance for closing of a street in city with population of 10,076. *Stephens v. City of Springdale*, 233 Ark. 865, 350 S.W.2d 182 (1961).

14-301-111. Abandonment suits involving public interest.

All suits which involve the right of any city to abandon any such property as a street or the unqualified and absolute fee simple ownership of the property free from the public easement therein for use as a street shall be deemed suits involving the public interest and shall be advanced in all courts and heard at the earliest practicable moment.

History. Acts 1927, No. 40, § 4, p. 117;
Pope's Dig., § 10031; A.S.A. 1947,
§ 19-3816.

14-301-112. Abandonment of unnecessary alleys in cities of the first class — Utilities as property owners.

(a) Whenever the city council of any city of the first class shall find and determine that any alley or other passageway across any particular block within the city is not needed for highway purposes and that the welfare of the city will be enhanced or promoted by the closing and abandoning of the alley or passageway, the city council shall have authority, acting by and through its mayor and city clerk and pursuant to resolution of the council, to join in a written agreement with the owners of all the real estate of the block to close and abandon the alley or passageway.

(b) Upon the proper execution and acknowledgment of the instrument and the filing of it in the office of the proper circuit clerk and recorder, the title to the alley or passageway so abandoned shall vest in the owners of the real estate adjacent thereto, each adjacent owner taking title to the middle of the alley or passageway.

(c) Express authority is granted and conferred upon cities of the first class to close and abandon alleys or other passageways in this manner.

(d) However, any owner of property in the vicinity of the alley, feeling aggrieved by the action, may file suit within thirty (30) days after the filing of the instrument in the office of the circuit clerk and recorder to have the court determine whether he has been especially damaged by the action.

(e) Any person, firm, or corporation which has erected or installed any conduit, pipe, cable, pole, or overhead wire along or across any such alley or passageway shall be considered a property owner whose consent to the closing of the alley or passageway must be secured as provided in this section.

History. Acts 1931, No. 210, § 1;
Pope's Dig., § 10032; A.S.A. 1947,
§ 19-3817.

CASE NOTES

Applicability.

This section relates only to alleys or other passageways across a block; therefore it afforded no ground for dismissal of

action to enjoin enforcement of ordinance for closing of a street. *Stephens v. City of Springdale*, 233 Ark. 865, 350 S.W.2d 182 (1961).

14-301-113. Prohibition on adverse possession of alleys, streets, or public parks — Validity of prior deeds.

(a) No title or right of possession to any alley, street, or public park, or any portion thereof, in any city or incorporated town in this state shall or can be acquired by adverse possession or adverse occupancy thereof. The right of the public or of any city or incorporated town in this state or of the authorities of any such city or incorporated town to open or have opened any alley, street, or public park, or parts thereof, shall not be defeated in any action or proceeding by reason or because of adverse possession or adverse occupancy of the alley, street, or public park or any portion thereof where such adverse possession or occupancy commenced after the passage of this section.

(b) However, all deeds or conveyances to any portion of any lands dedicated to public use as a street or thoroughfare in any city of the first or second class made by authority of the city council of the city during and prior to the year 1924 shall be confirmed and validated, subject, however, to the payment of any purchase money that may be due and owing therefor. No such deed or conveyance made as aforesaid shall be impeached on the ground that it was made without authority of law. No such deed or conveyance shall be valid if any street or boulevard is thereby reduced in width to less than fifty feet (50').

History. Acts 1907, No. 426, § 1, p. 1147; C. & M. Dig., § 7570; Acts 1927, No. 204, § 1; Pope's Dig., § 9646; A.S.A. 1947, § 19-3831.

Publisher's Notes. In reference to the term "passage of this section", Acts May 28, 1907, No. 426 was signed by the Governor on May 28, 1907, and § 2 provided

that the act was to take effect "from and after its passage". However, this effective date would be invalid under decisions in *Arkansas Tax Comm. v. Moore*, 103 Ark. 49, 145 S.W. 199 (1912) and *Cunningham v. Walker*, 198 Ark. 928, 132 S.W.2d 24 (1939).

RESEARCH REFERENCES

Ark. L. Rev. Exemptions Under the Statute of Limitations for Adverse Possession, 6 Ark. L. Rev. 37.

Adverse Possession Against the United States — A Treasure for Trespassers, 26 Ark. L. Rev. 467.

CASE NOTES

ANALYSIS

In general.

Applicability.

Abandonment of public easement.

Conveyance of property.
Statute of limitations.

In General.

Title to streets cannot be acquired by

adverse possession. *City of Magnolia v. Burton*, 213 Ark. 157, 209 S.W.2d 684 (1948).

The municipality is a creature of the state, and because of legislation as to the impossibility of adverse possession of streets, a municipality now occupies, insofar as the streets and public parkways are concerned, the same status as the state occupies, the rule of constructive eviction — when title is in the sovereign — applying when title is in the city. *Wood v. Setliff*, 229 Ark. 1007, 320 S.W.2d 655 (1959).

In an action seeking to enjoin the city from widening a street, without a showing of actual title of record or by the monuments referred to on the plats, owners could only rely upon adverse possession or laches, neither of which applied, as no title or right of possession to any alley, street, or public park, or any portion thereof, in any city or incorporated town can be acquired by adverse possession or adverse occupancy. *Bushmaier v. City of Little Rock*, 231 Ark. 848, 333 S.W.2d 236 (1960).

Applicability.

Prior to the enactment of this section, there was no statute exempting incorporated cities and towns from the running of the statute of limitations as to streets and alleys, and its operation is limited to adverse possession or occupancy commenced or begun after its passage. *Hoxie v. Gibson*, 150 Ark. 432, 234 S.W. 490 (1921).

Adverse possession of an alley in a city by the owner and his grantors for more than the statutory period prior to the enactment of this section barred the city and public from asserting any right to open up and use it without condemnation, even if there was an original dedication. *City of Little Rock v. Galloway*, 162 Ark. 329, 258 S.W. 356 (1924).

Prior to this section, seven years' adverse possession would convey title in a city of the second class. *City of Fordyce v. Hampton*, 179 Ark. 705, 17 S.W.2d 869 (1929).

Prior to this section, towns were subject to the statute of limitations on recovering property in adverse possession. *City of Searcy v. Roberson*, 256 Ark. 1081, 511 S.W.2d 627 (1974).

Abandonment of Public Easement.

Where public used section of unplatted land as an alley for many years, but owner of land erected a gate across the alley and maintained it for 17 years, failure of the public to object to erection of gate created an abandonment of public easement, where unplatted land was never dedicated to the public by the original owner. *Kennedy v. Crouse*, 214 Ark. 830, 218 S.W.2d 375 (1949).

Conveyance of Property.

A decree enjoining the defendant's predecessor in title from enclosing or obstructing an alley adjacent to defendant's lot was held to bind the defendant and prevent him from acquiring title by adverse possession through possession of such predecessor, since the decree is binding upon the parties and on persons in privity with them. *Langford v. Griffin*, 179 Ark. 574, 17 S.W.2d 296 (1929).

Action filed for breach of warranty a few days prior to date of deed alleging that a considerable portion of the property described in the deed was at the time of conveyance and at all times thereafter a public street or parkway was timely, the warranty being breached as of the date of conveyance. *Wood v. Setliff*, 229 Ark. 1007, 320 S.W.2d 655 (1959).

Statute of Limitations.

Where the owner of land dedicates street and alleys to a city or town and thereafter remains in possession of the premises conveyed, he is presumed to hold it in subordination to the title conveyed unless there is affirmative evidence of a contrary intention; and where his occupancy and use are not manifestly inconsistent with the right of his grantee, notice of the hostility of his claim must be brought home to the municipality before the statute of limitations begins to run. *City of Stuttgart v. John*, 85 Ark. 520, 109 S.W. 541 (1908).

While the state, in the exercise of its sovereign powers, is not barred by the statute of limitations, the public itself, in the assertion of its rights through other agencies, is barred by the statute of limitations where there are no limitations in its favor. *Town of Madison v. Bond*, 133 Ark. 527, 202 S.W. 721 (1918).

Where an incorporated town ceased to elect officers or to exercise its functions as

such, this fact would not bar the running against it of the statute of limitations as to one occupying adversely a portion of a public street, since, in spite of the nonuser of the corporate franchise, the town still

existed and it possessed the right to sue. *Town of Madison v. Bond*, 133 Ark. 527, 202 S.W. 721 (1918).

Cited: *Neyland v. Hunter*, 282 Ark. 323, 668 S.W.2d 530 (1984).

14-301-114. Validation of pre-1960 conveyances of streets, etc. — Prohibition on impeaching deed.

(a) All deeds or conveyances of any street, alley, or public ground, or any portion of streets, alleys, or public grounds, executed by any city of the first class, city of the second class, or incorporated town in the State of Arkansas, conveying all or any portion of the street, alley, or public ground which before the making of the deed had been dedicated to public use, and made by authority of the city council or board of aldermen of the city or incorporated town named as grantor in the deed, prior to 1960, shall be validated.

(b) No such deed made as set forth in § 14-301-202, shall be impeached or its validity brought in question on the ground that the deed was made without authority of law. However, this section shall not change the effect of any judgment or decree rendered by any court of this state before the passage of this section in any cause wherein the validity of the deed has been brought in question, nor shall this section be pleaded in any action now pending in any of the courts of this state wherein the validity of any deed executed by any city or town of the type referred to in subsection (a) of this section is a matter of litigation.

History. Acts 1967, No. 201, §§ 1, 2; A.S.A. 1947, §§ 19-3834, 19-3835.

ing act for deeds prior to 1950, Acts 1955, No. 16.

Publisher's Notes. As to prior validat-

RESEARCH REFERENCES

Ark. L. Rev. Validation of Certain Deeds, 9 Ark. L. Rev. 414.

14-301-115. Validation of pre-1925 conveyances of land for streets.

(a) All deeds or conveyances to any portion of any lands dedicated to public use as a street or thoroughfare to any incorporated town, made by authority of the city council to individuals prior to and during the year 1924, shall be and are confirmed and validated.

(b) No such deed or conveyance made as aforesaid shall be impeached on the ground that it was made without authority of law.

History. Acts 1943, No. 40, §§ 1, 2; A.S.A. 1947, §§ 19-3832, 19-3833.

SUBCHAPTER 2 — STREET IMPROVEMENTS

SECTION.

- 14-301-201. Provisions supplemental.
 14-301-202. Street improvement studies
 — Resolution of findings
 and determinations.
 14-301-203. Petition to undertake im-
 provements — Notice —
 Special meeting.

SECTION.

- 14-301-204. Hearing on petition — As-
 sessments.
 14-301-205. Payment.
 14-301-206. Lien of assessment.
 14-301-207. Disposition of assessments
 collected.

RESEARCH REFERENCES

ALR. Damages resulting from tempo- improvements or repairs as compensable
 rary conditions incident to public im- taking. 23 ALR 4th 674.

14-301-201. Provisions supplemental.

The procedure prescribed in this subchapter for the construction of street improvements and the financing thereof shall be supplemental to all other laws of this state with respect thereto and shall not be construed to amend, repeal, or otherwise affect those laws.

History. Acts 1967, No. 252, § 7;
 A.S.A. 1947, § 19-3842.

14-301-202. Street improvement studies — Resolution of findings and determinations.

(a) When the governing body of any city or incorporated town in this state shall deem it desirable to enter into a street improvement program in the city or town or any defined areas thereof, the governing body of the city or town may cause studies to be made of:

(1) The needs for street improvements including grading, paving, curbing, guttering, drainage, and storm sewers in the city or town or the designated areas thereof; and

(2) The approximate cost of the improvements, the means available for financing the improvements, the portion thereof which the municipality is willing and able to pay, taking into account any funds available to the city for street improvements including federal funds and the approximate assessment which would be made against each lot or parcel of property in the defined area to reimburse the city for the cost of the improvements to be borne by the property owners in the area.

(b) Upon the completion of the study and determination as provided for in this section, the governing body of the municipality may adopt a resolution setting forth the findings and determinations and agreeing to make the improvements and pay for the improvements out of funds available to the municipality for those purposes, provided the property

owners in the municipality or defined areas thereof agree to repay the municipality the cost of the improvements or a prescribed percentage of the cost through uniform, ad valorem, according to value assessed benefits upon each lot or parcel of property in the municipality or defined areas thereof. The governing body of the municipality shall cause the resolution to be published one (1) time in a newspaper of general circulation in the municipality.

History. Acts 1967, No. 252, § 1;
A.S.A. 1947, § 19-3836.

14-301-203. Petition to undertake improvements — Notice — Special meeting.

(a) If, within sixty (60) days after the adoption and publication of the resolution by the governing body of the municipality, petitions are filed with the clerk or recorder of the municipality containing the signatures of a majority in value of the real property owners in the municipality or the defined areas thereof requesting that the improvements be undertaken and financed in the manner as stated in the resolution adopted by the governing body of the municipality as authorized in § 14-301-202, the clerk or recorder shall set a date and place for a public hearing on the sufficiency of the petitions.

(b) Notice of the public hearing shall be published one (1) time in a newspaper of general circulation in the municipality not less than five (5) days prior to the date fixed for the hearing.

(c) The governing body of the municipality may hold a special meeting for the purpose of conducting the hearing.

History. Acts 1967, No. 252, § 2;
A.S.A. 1947, § 19-3837.

14-301-204. Hearing on petition — Assessments.

(a) At the time and place stated in the notice, the governing body of the municipality shall meet and hear all owners of real property of the designated areas in the municipality who wish to be heard on the question of whether the petitions contain the signatures of a majority in value of the real property owners of the designated areas in the municipality and shall make a finding and ruling as to whether the petitions contain the signatures of a majority in value of the real property owners and shall publish the finding one (1) time in a newspaper of general circulation in the municipality.

(b) The finding and ruling of the governing body of the municipality with respect to the sufficiency of the petitions shall be final and conclusive unless questioned by action filed in the chancery court of the county in which the municipality is located within thirty (30) days after the date of publication of the findings.

(c) If the governing body of the municipality determines that the petitions and signatures on the petition are sufficient, it shall cause an

assessment to be made against each lot or parcel of real property in the municipality or the designated areas, based upon the cost of the improvements to be borne by the property owners in the district and the benefits accruing to each lot and parcel of property because of the improvements, with the assessments on property in the municipality or designated areas to be ad valorem, according to value of benefits, and uniform.

(d) A copy of the assessed benefits shall be filed with the city clerk or recorder.

(e) Notice that the assessed benefits have been filed with the city clerk or recorder shall be published once in a newspaper of general circulation in the municipality, and the assessments shall be final and conclusive unless questioned by action filed in the chancery court within thirty (30) days after the date of publication of notice of the filing of the assessed benefits.

History. Acts 1967, No. 252, § 3;
A.S.A. 1947, § 19-3838.

14-301-205. Payment.

(a) The assessments on the real property in the district shall be payable to the city or town collector in the manner and within the time prescribed by the governing body of the municipality.

(b) Property owners may be given the option to pay the amount of the assessments in one (1) lump sum payment, or to pay the amount of the assessment in installments, within a time and at a rate of interest prescribed by the governing body of the municipality.

History. Acts 1967, No. 252, § 4;
A.S.A. 1947, § 19-3839.

14-301-206. Lien of assessment.

(a) The assessment against each lot or parcel of property shall constitute a lien on the property in favor of the municipality.

(b) When any annual assessed benefit against any lot or parcel of property has not been paid for two (2) years from the date due, the delinquent assessment plus a ten percent (10%) penalty shall be certified by the mayor to the county clerk. The clerk shall place the assessment and penalty on the tax book as delinquent taxes, which shall be collected accordingly. The amount, when so collected, shall be paid to the city by the collector.

History. Acts 1967, No. 252, § 5;
A.S.A. 1947, § 19-3840.

14-301-207. Disposition of assessments collected.

All funds derived from assessments upon real property under the provisions of this subchapter shall be funds of the municipality, shall at all times be kept separate and apart from other funds of the municipality, and shall be used solely to reimburse the municipality for expenses incurred in making the study and survey provided for in § 14-301-202 and for funds expended by the municipality for the street improvements made pursuant to the provisions of this subchapter.

History. Acts 1967, No. 252, § 6;
A.S.A. 1947, § 19-3841.

SUBCHAPTER 3 — VACATING STREETS AND ALLEYS FOR PUBLIC USE GENERALLY

SECTION.

14-301-301. Power and authority to vacate.

14-301-302. Petition to vacate — Notice of hearing.

14-301-303. Hearing — Written consent of abutting owners.

14-301-304. Ordinance vacating street or alley.

SECTION.

14-301-305. Suit to reject ordinance — Evidence of consent.

14-301-306. Ownership of street or alley vesting in abutting owners — Pending suits unaffected.

Effective Dates. Acts 1945, No. 17, § 9: approved Feb. 6, 1945. Emergency clause provided: "Whereas, uncertainty now exists as to the power of cities and towns to vacate streets and alleys and the exercise of such power is necessary for the proper administration of municipal affairs, it is found that this act is necessary for the immediate preservation of the public peace, health and safety, and an emergency is hereby declared and this Act shall be in full force and effect from and after its passage."

Acts 1947, No. 88, § 3: Feb. 18, 1947. Emergency clause provided: "The General Assembly of the State of Arkansas finds and declares that numerous uncertainties in the application of Section 2 of Act 17 of the Acts of the General Assembly for 1945 have arisen and will continue to arise because of the antiquity of the proof required thereunder, therefore an emer-

gency is hereby declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1949, No. 98, § 4: Feb. 16, 1949. Emergency clause provided: "The General Assembly of the State of Arkansas finds and declares that numerous uncertainties in the application of Section 2 of Act 17 of the Acts of the General Assembly of 1945 have arisen and will continue to arise because of the antiquity of the proof required thereunder, therefore an emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in full force from and after the date of its passage and approval."

CASE NOTES

Construction.

This subchapter does not repeal subdivision (2) of § 14-54-104. *Cernauskas v.*

Fletcher, 211 Ark. 678, 201 S.W.2d 999 (1947).

14-301-301. Power and authority to vacate.

(a) Cities of the first and second class and incorporated towns are given power and authority to vacate public streets and alleys within the cities and towns under the conditions and in the manner herein provided.

(b) In all cases where the owner of property within a city or town shall have dedicated, or may hereafter dedicate, a portion of the property to the public use as streets or alleys by platting the property and causing the plat to be filed for record, as provided by law, and any street or alley, or section thereof, shown on the plat so filed shall not have been actually used by the public as a street or alley for a period of five (5) years and in all cases where all property abutting any street or alley, or section thereof, is owned by any educational institution or college, whether the property shall have been actually used by the public as a street or alley for a period of five (5) years or not, the city or town council shall have power to vacate and abandon the street or alley, or any portion thereof, by proceeding in the manner set forth in this subchapter.

History. Acts 1945, No. 17, §§ 1, 2; 1947, No. 88, § 1; 1949, No. 98, § 1; A.S.A. 1947, §§ 19-3824, 19-3825.

CASE NOTES

ANALYSIS

Applicability.

Educational institution.

Applicability.

This section has no applicability to the vacation of streets or alleys which have not been dedicated to public use by the owner of the property by platting the property and causing the plat to be filed for record as prescribed. *Cernauskas v. Fletcher*, 211 Ark. 678, 201 S.W.2d 999 (1947).

This section relates to streets that have not been used for five years; therefore, it afforded no ground for dismissal of action to enjoin enforcement of ordinance for closing of street that was being used and had been used for 50 years. *Stephens v.*

City of Springdale, 233 Ark. 865, 350 S.W.2d 182 (1961).

This section does not affect the power of a city to vacate and close a portion of a street under the authority of § 14-54-104. *Brooksher v. Jones*, 238 Ark. 1005, 386 S.W.2d 253 (1965).

Educational Institution.

The city had power to vacate two block-long sections of streets and a block-long section of alley where all the land abutting the sections of streets and alley was owned by a bishop who operated a church and school thereon. *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968).

Cited: *Ellington v. Rammel*, 226 Ark. 569, 293 S.W.2d 452 (1956); *Kemp v. Simmons*, 244 Ark. 1052, 428 S.W.2d 59

(1968); *City of Little Rock v. Linn*, 245 Ark. 257, 432 S.W.2d 455 (1968); *Bekaert Steel Wire Corp.*, 619 F. Supp. 1234 (W.D. Ark. 1985).

14-301-302. Petition to vacate — Notice of hearing.

(a) The owners of any property abutting upon a street or alley referred to in § 14-301-301, may file a petition with the city or town council requesting the council to vacate the street or alley, or a portion thereof.

(b) The petition shall designate the street or alley, or a portion thereof, to be vacated, and there shall be filed with the petition a certified or photostatic copy of the portion of the plat filed in the office of the county recorder which shows the street or alley to be vacated, together with the lot and block numbers of each lot which abuts upon the street or alley to be vacated.

(c) At the next regular or special meeting of the council, the council shall, by resolution, fix a day for the hearing of the petition and shall direct the city clerk or town recorder to give notice of the meeting by publication once a week for two (2) consecutive weeks in some newspaper published in the county and having a general circulation in the city or town.

(d) The notice shall:

(1) State the names of the persons who sign the petition;

(2) State the name of the street or alley, or the portion thereof, to be vacated. If the street or alley is not named on the plat, the notice shall identify the street or alley by the abutting lot or block numbers; and

(3) Advise all persons that on a certain day named in the notice, the council will hear and determine whether the street or alley shall be vacated.

History. Acts 1945, No. 17, § 3; A.S.A. 1947, § 19-3826.

CASE NOTES

Cited: *Ellington v. Rummel*, 226 Ark. 569, 293 S.W.2d 452 (1956).

14-301-303. Hearing — Written consent of abutting owners.

At the meeting of the council as designated in the notice, any property owner affected by the petition shall be heard. The council shall then determine whether, from the standpoint of public interest and welfare, the street or alley should be vacated as proposed in the petition. However, no street or alley, or any portion thereof, shall be abandoned or vacated unless there has been filed with the council the written consent of the owners of all lots abutting on the street or alley, or the portion thereof, to be vacated.

History. Acts 1945, No. 17, § 4; A.S.A. 1947, § 19-3827.

CASE NOTES

Abutting Property Owners.

In litigation involving the closing of an alley where the procedure was instituted under this section, which necessitated the written consent of the owners of all abutting lots, while the written consent of those owners actually abutting the two ends of the alley had been obtained, from the practical standpoint upon both ends of the alley being closed, the entire alley would become closed, and therefore, all abutting property owners not having given their consent, the petitioners had to fail. *Roberts v. Pace*, 230 Ark. 280, 322 S.W.2d 75 (1959).

This section did not repeal § 14-54-104, and the failure of parties to secure the closing of an alley under the procedure set out in this section, requiring the consent of the abutting property owners, would not be res judicata of any future litigation between the same parties instigated under § 14-54-104, the procedure there involving the closing of an alley in order to better provide for the public welfare of the inhabitants of the city. *Roberts v. Pace*, 230 Ark. 280, 322 S.W.2d 75 (1959).

Cited: *Ellington v. Rimmel*, 226 Ark. 569, 293 S.W.2d 452 (1956).

14-301-304. Ordinance vacating street or alley.

(a) If the council shall find by a majority vote of its members that the petition should be granted, either in whole or in part, the decision of the council shall be incorporated in an ordinance to that effect which shall be substantially as follows:

"Whereas, a petition was duly filed with the City (or Town) Council of the City (or Town) of, Arkansas, on theday of, 19 ..., asking the City (or Town) Council to vacate and abandon all that portion of the street (or alley) designated on the plat of theAddition to the City (or Town) now appearing of record in plat book, page, in the office of the recorder ofCounty, beginning atand ending at

"Whereas, after due notice as required by law, the council has, at the time and place mentioned in the notice, heard all persons desiring to be heard on the question and has ascertained that the street (or alley) or the portion thereof, hereinbefore described, has heretofore been dedicated to the public use as a street (or alley) herein described; has not been actually used by the public generally for a period of at least five (5) years subsequent to the filing of the plat; that all the owners of the property abutting upon the portion of the street (or alley) to be vacated have filed with the council their written consent to the abandonment; and that public interest and welfare will not be adversely affected by the abandonment of the street (or alley).

"Now, therefore, be it ordained by the City (or Town) Council of the City (or Town) of, Arkansas:

"Section 1. The City (or Town) of, Arkansas, releases, vacates, and abandons all its rights, together with the rights of the public generally, in and to the street (or alley) designated as follows:

"(Here will be designated the street or alley to be abandoned by reference to the official plat.)

"Section 2. A copy of the ordinance duly certified by the city clerk or town recorder shall be filed in the office of the recorder of the county and recorded in the deed records of the county.

"Section 3. This ordinance shall take effect and be in force from and after its passage."

History. Acts 1945, No. 17, § 5; A.S.A. 1947, § 19-3828.

CASE NOTES

Cited: *Ellington v. Rimmel*, 226 Ark. 569, 293 S.W.2d 452 (1956).

14-301-305. Suit to reject ordinance — Evidence of consent.

(a) The determination, findings, and ordinance of the council shall be conclusive unless, within thirty (30) days after the passage of the ordinance, suit is brought to reject the ordinance in the chancery court of the county where the city or town is located.

(b) In determining whether all abutting property owners have consented to the abandonment, the council and chancery court shall be limited by the record of deeds in the office of the recorder of the county and shall not consider unrecorded instruments.

History. Acts 1945, No. 17, § 6; A.S.A. 1947, § 19-3829.

CASE NOTES

ANALYSIS

Abutting property owners.
Nonabutting owners.
Ordinances upheld.
Res judicata.

Abutting Property Owners.

In litigation involving the closing of an alley where the procedure was instituted under § 14-301-303, which necessitated the written consent of the owners of all abutting lots, while the written consent of those owners actually abutting the two ends of the alley had been obtained, from the practical standpoint upon both ends of the alley being closed, the entire alley would become closed, and therefore, all abutting property owners not having given their consent, the petitioners had to fail. *Roberts v. Pace*, 230 Ark. 280, 322 S.W.2d 75 (1959).

Nonabutting Owners.

Where nonabutting owners could not show special and peculiar injury suffered in connection with the closing of a street in which city had only an easement, the nonabutting owners did not have standing to challenge city ordinance vacating and abandoning the street. *Freeze v. Jones*, 260 Ark. 193, 539 S.W.2d 425 (1976).

Ordinances Upheld.

Where city board of directors found that traffic on a portion of a street had declined and that closing of this portion of the street would not work a hardship on many people, and where owners of abutting property consented to closing of the street, an ordinance adopted by the board of directors vacating and abandoning the street was not ultra vires. *Freeze v. Jones*, 260 Ark. 193, 539 S.W.2d 425 (1976).

Res Judicata.

Where only issue in prior suit to enjoin city from enforcing ordinance adopted under the authority of this subchapter purporting to close certain streets was the validity of such ordinance, authority of city to adopt ordinance under § 14-54-104 relocating portions of such streets was not res judicata in proceeding to enjoin enforcement of second ordinance. *Risser v. City of Little Rock*, 225 Ark. 318, 281 S.W.2d 949 (1955), cert. denied, 350 U.S. 965, 76 S. Ct. 439, 100 L. Ed. 838 (1956).

This section did not repeal § 14-54-104, and the failure of parties to secure the

closing of an alley under the procedure set out in § 14-301-303, requiring the consent of the abutting property owners, would not be res judicata of any future litigation between the same parties instigated under § 14-54-104, the procedure there involving the closing of an alley in order to better provide for the public welfare of the inhabitants of the city. *Roberts v. Pace*, 230 Ark. 280, 322 S.W.2d 75 (1959).

Cited: *Ellington v. Rummel*, 226 Ark. 569, 293 S.W.2d 452 (1956); *City of Little Rock v. Linn*, 245 Ark. 257, 432 S.W.2d 455 (1968).

14-301-306. Ownership of street or alley vesting in abutting owners — Pending suits unaffected.

(a) Upon the adoption of the ordinance, the absolute ownership of the property abandoned by the city or town shall vest in the owners of the real estate abutting thereon. Each such abutting owner shall take title to the center line of the street or alley so abandoned, and the ownership shall be free from the easement of the city or town for public use as a street or alley.

(b) This subchapter shall not affect suits now pending in any of the courts of this state.

History. Acts 1945, No. 17, § 7; A.S.A. 1947, § 19-3830.

CASE NOTES

Vesting of Ownership.

Where a street right-of-way has been dedicated by the filing of a plat and the easement has been accepted by the city, the ownership of the fee in the right-of-way remains in the abutting owners, so

that when the city vacates the street it cannot be sold by the city nor devoted to another public use. *Freeze v. Jones*, 260 Ark. 193, 539 S.W.2d 425 (1976).

Cited: *Ellington v. Rummel*, 226 Ark. 569, 293 S.W.2d 452 (1956).

SUBCHAPTER 4 — CLOSURE OF ALLEYS TO BUILD SCHOOLS, HOSPITALS, ORPHANAGES, OR CHURCHES

SECTION.

14-301-401. Closure authority.

14-301-402. Petition of property owners to close alley — Notice.

14-301-403. Hearing — Closure ordinance.

SECTION.

14-301-404. Appeal — Bond.

14-301-405. Transcripts.

Effective Dates. Acts 1923 (1st Ex. Sess.), No. 30, § 7: approved Oct. 23, 1923. Emergency clause provided: "This act being necessary for the immediate

preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in force from and after its passage."

14-301-401. Closure authority.

When, in the opinion of a majority of the members of any city or town council in any of the cities of the first or second class or any incorporated towns of this state, it shall be necessary and desirable to use the land which is or may be dedicated for the use of the general public as an alley through or across any part of any block in the city or town, upon which to build any public school, hospital, orphanage, or church building, or any addition to the buildings as may be built, it shall be lawful for the city or town council, by ordinance duly enacted, to vacate and close the alley, or any part thereof, thereby cancelling and rescinding the rights of the general public and the owners of real property abutting upon the alley to use the property as an alley. However, the procedure for vacating and closing an alley or any part thereof shall be as set out in this subchapter.

History. Acts 1923 (1st Ex. Sess.), No. 30, § 1; Pope's Dig., § 9603; A.S.A. 1947, § 19-3818.

CASE NOTES

Closings Justified.

Where a bishop owned all the real estate abutting portions of two streets and an intersecting alley sought to be closed and desired to close them to permit the construction of additional facilities for a church school operated by him on such abutting lands, nearby streets and alleys

could readily carry all the traffic diverted from those to be closed, and the inconvenience to neighboring property owners would be slight, the closing of the portions of streets and alley as petitioned was justified. *City of Little Rock v. Linn*, 245 Ark. 260, 432 S.W.2d 455 (1968).

14-301-402. Petition of property owners to close alley — Notice.

When any person files with the city clerk or recorder of any city of the first or second class or any incorporated town in this state a petition signed by ten (10) or more persons claiming to be owners of real property in the city or town and including a majority of the owners of real property abutting upon any alley running through or across any part of any block in the city, with this petition stating that the land embraced in the alley or any part thereof is needed for the purpose of building on the lands any public school, hospital, orphanage, or church building, or any addition to those buildings, and praying that the alley be vacated as a whole or in part and, if not as a whole, describing specifically the part of the alley desired to be vacated, then it shall be

the duty of the city clerk or recorder to give notice of the filing of the petition by publication in some newspaper published in the city or town, by one (1) insertion. If no newspaper is published therein, notice shall be given by publication of the notice, by one (1) insertion, in any newspaper published in the county and shall call upon the owners of real property abutting upon the alley and upon all other persons, firms, and corporations, to appear before the council of the city or town at its next regular meeting to be held after ten (10) days from the date of the notice and show cause, if any they can, why the petition should not be granted and the alley vacated.

History. Acts 1923 (1st Ex. Sess.), No. 30, § 2; Pope's Dig., § 9604; A.S.A. 1947, § 19-3819.

14-301-403. Hearing — Closure ordinance.

On the day named in the notice provided for in § 14-301-402 of this subchapter, the city or town council shall hear the petition and the protests and objections of all persons, firms, or corporations desiring to object to or protest against the closing and vacating of the alley, and if a majority of the city or town council finds that the petition is signed by ten (10) or more owners of real property in the city or town, including a majority of the owners of real property abutting upon the alley, and that it is desirable or necessary to close the alley for any of the purposes mentioned in § 14-301-401, then the city or town council shall, by ordinance, vacate and close the alley or such part thereof as may be described in the petition. Thereafter, the right of the general public and of the owners of real property abutting upon the alley to use the lands embraced therein and described in the petition as an alley shall be forever cancelled and barred, and the title to the lands embraced in the alley shall be forever free of the right of all persons to use the lands as an alley. However, no protest or objection to the closing of the alley shall be considered by the council or by any court on appeal unless the protest or objection shall be in writing and shall be filed before or at the hearing provided for in this section.

History. Acts 1923 (1st Ex. Sess.), No. 30, § 3; Pope's Dig., § 9605; A.S.A. 1947, § 19-3820.

14-301-404. Appeal — Bond.

(a) Any person, firm, or corporation aggrieved by the finding of any council of any city or town upon any petition named in this subchapter shall have the right to appeal to the circuit court of the county in which the city or town is located, upon the filing of a good and sufficient bond for all costs of the appeal and an affidavit setting forth that the appeal is not taken for delay but that justice may be done the party appealing. The bond and affidavit shall be filed within ten (10) days after the

hearing provided for in § 14-301-402, and not thereafter, but the appeal shall not operate to delay the construction of any building of any public school, hospital, orphanage, or church unless the parties taking the appeal shall enter into bond for the diligent prosecution of the appeal and guaranteeing the payment of all damages that may result from the delay in the construction of the buildings during the time the appeal shall be pending. The bond is to be filed with the city clerk or recorder of the city or town council from the finding of which the appeal shall be taken.

(b) Upon all appeals, the case shall be heard *de novo* by the circuit judge sitting as a jury. If the court shall find that the lands embraced in the alley or any part of the alley described in the petition are needed for the construction of any of the buildings described in § 14-301-401, that the petition is signed by ten (10) or more owners of real property in the city or town where the alley lies, and that the petition is also signed by a majority of the owners of real property abutting the alley, it shall be the duty of the court to dismiss the appeal; otherwise, the court shall declare the ordinance passed by the city or town council to be void and of no effect and shall enter an order accordingly.

History. Acts 1923 (1st Ex. Sess.), No. 30, §§ 4, 6; Pope's Dig., §§ 9606, 9608; A.S.A. 1947, §§ 19-3821, 19-3823.

14-301-405. Transcripts.

(a) Upon the filing of any bond and affidavit for appeal with the city clerk or recorder, as provided in this subchapter, the city clerk or recorder shall immediately prepare a certified transcript of the record in the case. The transcript shall include copies of the original petition, the bond and affidavit for appeal and the ordinance enacted by the city or town council upon the petition closing and vacating the alley. The recorder or clerk shall certify the transcript, affixing to the certificate of the transcript the seal of the city or town council and shall file the transcript with the circuit clerk of the county. The appeal shall stand for trial upon the first day thereafter that the circuit court shall meet in regular or adjourned session.

(b) The appeal, upon motion of any of the parties interested therein, shall be advanced and heard ahead of any and all other cases, such matters being of great public interest and importance. Upon notice by any interested party requiring him to do so, the city clerk or recorder shall file with the circuit clerk any or all of the original papers in such matters.

History. Acts 1923 (1st Ex. Sess.), No. 30, § 5; Pope's Dig., § 9607; A.S.A. 1947, § 19-3822.

CHAPTER 302

MUNICIPAL STREET AND PARKING REVENUE BOND ACT

SECTION.

- 14-302-101. Title.
- 14-302-102. Purpose and construction.
- 14-302-103. Chapter cumulative.
- 14-302-104. Definitions.
- 14-302-105. Power of municipalities over street and parking projects.
- 14-302-106. Authority to issue bonds — Costs.
- 14-302-107. Issuance of bonds — Sale.
- 14-302-108. Execution of bonds and coupons — Seal.

SECTION.

- 14-302-109. Bonds as special obligations payable from street and parking revenues.
- 14-302-110. Use of street and parking revenues for the payment of bonds issued.
- 14-302-111. Refunding bonds.
- 14-302-112. Revenue bonds made securities.
- 14-302-113. Bonds — Tax exemption.

Effective Dates. Acts 1967, No. 317, § 14: Mar. 13, 1967. Emergency clause provided: "It is hereby found and declared that there is an immediate need for many municipalities in this State to accomplish street and parking projects and that the public health, safety and welfare of the citizens of this State are jeopardized because the municipalities involved do not have funds available to accomplish the projects and cannot issue bonds to accomplish the projects. The authority conferred by this act will make it possible for municipalities to proceed with the accomplishment of the needed projects and prompt action is necessary so that necessary planning can be undertaken and completed and the work undertaken as soon as possible. Therefore, it is declared, for these reasons, that an emergency exists and this act, being essential to the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 29, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her

people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1977, No. 476, § 3: became law without Governor's signature, Mar. 16, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that clarification is needed with regard to the distribution, dedication and/or use of municipal highway

turnback revenues pledged to accomplish street and parking projects. To make it possible for municipalities to proceed with the accomplishment of the needed projects and to insure that no default in bond payments will occur, prompt action is necessary. Therefore, it is declared, for these reasons, that an emergency exists and this Act, being essential to the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1981, No. 425, § 54; Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas

that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

14-302-101. Title.

This chapter may be referred to and cited as the "Municipal Street and Parking Revenue Bond Act."

History. Acts 1967, No. 317, § 1; A.S.A. 1947, § 13-1701.

Cross References. Local Government Bond Act of 1985, § 14-164-301 et seq.

14-302-102. Purpose and construction.

(a) This chapter shall be construed liberally.

(b) All acts and activities of the municipality performed pursuant to the authority of this chapter are legislatively determined and declared to be essential governmental functions.

(c) In this regard it is determined and declared that this chapter is the sole authority necessary for the performance of the acts authorized by this chapter including, without limitation, the issuance of bonds.

(d) There is conferred upon the municipalities of this state the authority to take such action and to do or cause to be done such things as shall be necessary or desirable to accomplish and implement the purposes and intent of this chapter according to the import hereof.

History. Acts 1967, No. 317, § 11; A.S.A. 1947, § 13-1711.

14-302-103. Chapter cumulative.

The provisions of this chapter shall be cumulative, insofar as the authority conferred and the subject matter dealt with is concerned, to all other laws dealing with the accomplishing of similar work to that embodied in street and parking projects dealt with in this chapter and to the financing and operation thereof by municipalities or agencies or authorities of municipalities.

History. Acts 1967, No. 317, § 13;
A.S.A. 1947, § 13-1711n.

14-302-104. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Bonds" means bonds issued under the authority of this chapter;
- (2) "Municipalities" means first-class cities, second-class cities, and incorporated towns;
- (3) "Street and parking revenues" means special revenues specified in § 14-302-110.

History. Acts 1967, No. 317, §§ 2, 3, 6;
A.S.A. 1947, §§ 13-1702, 13-1703, 13-1706.

14-302-105. Power of municipalities over street and parking projects.

Municipalities are authorized and empowered to acquire, by purchase or exercise of eminent domain:

- (1) Sites and rights-of-way to construct, reconstruct, widen, extend, and maintain streets, alleys, and roadways of every nature including, without limitation, bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, access roads, and any other work of whatever nature incidental thereto; and
- (2) Sites and rights-of-way to construct, reconstruct, widen, extend, and maintain and operate off-street parking facilities, sometimes collectively referred to in this chapter as "street and parking projects."

History. Acts 1967, No. 317, § 2;
A.S.A. 1947, § 13-1702.

14-302-106. Authority to issue bonds — Costs.

(a) Municipalities are authorized and empowered to issue revenue bonds from time to time in principal amounts sufficient to pay the costs of street and parking projects as they are defined in subsection (c) of this section.

(b) More than one (1) street or parking project, or combination thereof, may be involved as to any issue of revenue bonds hereunder. There may be more than one (1) issue for a particular street or parking project, or combination thereof, or there may be one (1) issue sold and delivered in series.

(c) The costs of a street or parking project, or combination thereof, as the case may be, may include all costs incurred in connection with the accomplishing of the project, an amount covering interest in bonds during construction and for a period up to one (1) year thereafter, any amounts determined to be desirable by the municipality for funding debt service and maintenance reserves, and all expenses incurred in connection with the authorization and issuance of bonds.

History. Acts 1967, No. 317, § 3;
A.S.A. 1947, § 13-1703.

14-302-107. Issuance of bonds — Sale.

(a) Bonds shall be authorized by ordinance of the governing body of the municipality.

(b) They may be coupon bonds, payable to bearer, or may be registrable as to principal only, with interest coupons, or may be registrable as to both principal and interest without coupons, and may be made exchangeable for bonds of another denomination, which bonds of another denomination may in turn be either coupon bonds, payable to bearer, or bonds registrable as to principal only with coupons, or bonds registrable as to both principal and interest without coupons. The bonds may be in such form and denominations; the bonds may have such date or dates; the bonds may mature at such time or times and in such amount or amounts, provided that no bonds may mature more than forty (40) years from date; the bonds may bear interest payable at such times and at such rate or rates; the bonds may be payable at such place or places within or without the State of Arkansas; the bonds may be subject to such terms of redemption in advance of maturity at such prices, including such premiums; and the bonds may contain such other terms and provisions, all as the municipality issuing the bonds shall determine.

(c) The authorizing ordinance may contain any other terms, covenants, and conditions that are deemed desirable by the municipality including, without limitation:

(1) Provisions controlling the priority between and among successive issues;

(2) Those pertaining to the custody and application of bond proceeds, the maintenance and investment of various funds and reserves;

(3) The nature and extent of the security;

(4) The rights, duties, and obligations of the municipality and of the holders and registered owners of the bonds.

(d) Bonds may be sold in the manner the municipality involved may determine to be in its best interest and may be sold for such price including, without limitation, sale at a discount. The bonds may be sold with the privilege of conversion upon terms and conditions as the municipality involved shall specify, but in no event shall the municipality involved receive less or pay more than it would receive and pay if the bonds were not converted.

History. Acts 1967, No. 317, § 4; 1970 § 7; 1981, No. 425, § 7; A.S.A. 1947, (Ex. Sess.), No. 29, § 1; 1975, No. 225, § 13-1704.

14-302-108. Execution of bonds and coupons — Seal.

(a) Bonds shall be executed by the manual or facsimile signature of the mayor of the municipality and by the manual signature of the clerk or recorder of the municipality.

(b) Coupons attached to the bonds shall be executed by the facsimile signature of the mayor.

(c) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officer before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

(d) The bonds shall be sealed with the seal of the municipality issuing the bonds.

History. Acts 1967, No. 317, § 5;
A.S.A. 1947, § 13-1705.

14-302-109. Bonds as special obligations payable from street and parking revenues.

(a) The bonds shall not be general obligations of the municipality involved but shall be special obligations payable solely from the revenues specified in § 14-302-110.

(b) The principal of and interest on all bonds issued under the authority of this chapter shall be secured solely by a pledge of, and shall be payable solely from, street and parking revenues.

(c) The ordinance authorizing the issuance of bonds together with this chapter shall constitute a contract by and between the municipality and the holders and registered owners of all bonds issued by the municipality under the authority of this chapter, which contract, and all covenants, agreements, and obligations therein, shall be promptly performed in strict compliance with the terms and provisions of the contract. The contract and all rights of the holders and registered owners of the bonds and the obligations of the municipality may be enforced by mandamus or any other appropriate proceeding at law or in equity.

(d) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter.

History. Acts 1967, No. 317, § 6;
A.S.A. 1947, § 13-1706.

CASE NOTES

Cited: Daniels v. City of Fort Smith,
268 Ark. 157, 594 S.W.2d 238 (1980).

14-302-110. Use of street and parking revenues for the payment of bonds issued.

The municipality involved may pledge and use all or any part of the following street and parking revenues for the payment of bonds issued by it as follows:

(1) In the case of a parking project or of a street and parking project, the municipality is authorized to fix charges for the use of the off-street parking facilities and to pledge to, and use the net revenues derived therefrom for, the payment of the principal of and interest on the bonds. In that event, the municipality shall include a covenant in its contract with the bondholders that it will always operate the off-street parking facilities as a revenue-producing undertaking so long as any bonds issued by it under the authority of this chapter shall be outstanding, and that it will fix and collect charges for the use of the off-street parking facilities which will produce revenues at least sufficient to provide for the payment of any operation and maintenance expenses of the off-street parking facilities and leave a balance of funds which, together with other street and parking revenues specified in this section which it may pledge, will provide for the payment of the principal of, interest on, and paying agent's fees in connection with the bonds as they become due, and for the maintenance, at the required level, of a debt service reserve, if one is provided for.

(2)(A) In the case of a street project or of a street and parking project, the municipality is authorized to pledge and use all, or any part, of the net parking meter revenues derived from any or all parking meters in the municipality. As used in this section, "net parking meter revenues" means gross revenues derived from the operation of the parking meters, less the total of the following:

(i) The amounts, if any, required to be paid on a current basis on any indebtedness incurred in the acquisition of the parking meters;

(ii) The amounts of the costs of operating and maintaining the parking meters; and

(iii) If there are outstanding bonds to which a pledge of parking meter revenues has been made, the amounts required to be used for the timely payment of the principal, interest, and paying agent's fees on the outstanding bonds and for the maintenance at the required levels of any reserves or other funds specified in the authorizing ordinance or in the pledge securing the outstanding bonds.

(B) In the event net parking meter revenues are pledged and used, as authorized in this section, the municipality shall include a covenant in the contract with the bondholders that it will always operate its parking meters as a revenue-producing undertaking so long as any bonds issued by it under the authority of this chapter shall be outstanding and that it will fix and collect parking meter revenues in such amounts that net parking meter revenues, together with any other street and parking revenues specified in this section which it may pledge, will provide for the payment of the principal, interest,

and paying agent's fees in connection with the bonds as the bonds become due, and for the maintenance, at the required level, of a debt service reserve, if one is provided for.

(3) In the case of a street project or a parking project, or of a combination thereof, the municipality is authorized to pledge and use all, or any part, of the amounts at any time received from the Treasurer of State as municipal aid derived from the Arkansas Highway Revenue Distribution Law, as from time to time amended, § 27-70-201 et seq., or under any law replacing or intended as a substitute therefor which specifies the distribution of motor fuel taxes and motor vehicle registration and licensing fees. The treasurer of any municipality which shall have so pledged its municipal aid turnback for the bond payments pursuant to an executed bond ordinance shall withhold each month from the municipal aid turnback transfer for deposit in a special account within the municipality's street fund an amount sufficient to meet the current month's payment for the principal of, interest on, and paying agent's fees therefor. This payment shall be paid directly to the trustee, or other custodian of street and parking revenues, designated in the authorizing bond ordinance. So long as any bonds issued under the authority of this chapter shall be outstanding, if any changes are made by the General Assembly in municipal highway turnback revenues, or in the applicable highway revenue distribution law, the changes must be such that substantially the same amount of municipal highway turnback revenues pledged to outstanding bonds will be received by the municipality involved as would have been received had there been no changes.

History. Acts 1967, No. 317, § 7; 1977, No. 476, § 1; A.S.A. 1947, § 13-1707.

14-302-111. Refunding bonds.

(a) Revenue bonds may be issued for the purpose of refunding any bonds issued under the authority of this chapter.

(b) The refunding bonds may be combined into a single issue with revenue bonds issued for a street and parking project.

(c) Refunding bonds may either be sold or delivered in exchange for the bonds being refunded.

(d) If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement thereof, as shall be specified by the municipality in the ordinance authorizing and securing the refunding bonds.

(e) The ordinance authorizing the refunding bonds may provide that the refunding bonds shall have the same priority of lien on street and parking revenues pledged for their payment as was enjoyed by the bonds refunded. Refunding bonds shall be sold and secured in accordance with the provisions of this chapter pertaining to the sale and security of revenue bonds.

History. Acts 1967, No. 317, § 8;
A.S.A. 1947, § 13-1708.

14-302-112. Revenue bonds made securities.

(a) Revenue bonds issued under the authority of this chapter are made securities in which insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds including capital in their control or belonging to them.

(b) The bonds are made securities which may properly and legally be deposited with, and received by, any state or municipal officer or any agency or political subdivision of this state for any purpose for which the deposit of bonds or obligations of this state is now or may hereafter be authorized by law.

(c) Any municipality or county; any board, commission, or other authority established by any such municipality or county; or the boards of trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this chapter. Bonds issued under the authority of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1967, No. 317, § 9;
A.S.A. 1947, § 13-1709.

14-302-113. Bonds — Tax exemption.

The principal of, and interest on, bonds issued under the authority of this chapter shall be exempt from all state, county, and municipal taxes. This exemption shall include income, inheritance, and estate taxes.

History. Acts 1967, No. 317, § 10;
A.S.A. 1947, § 13-1710.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Arkansas Constitution, Amendment 57, § 1 and § 26-3-302. The Arkansas Constitution, Amendment 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value

than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

CHAPTER 303

MUNICIPAL TOLLWAY AUTHORITY ACT

SUBCHAPTER.

1. GENERAL PROVISIONS
2. MUNICIPAL TOLLWAY AUTHORITIES.
3. CONSTRUCTION OF TOLLWAY PROJECTS.
4. TOLLWAY PROJECT REVENUES.
5. TOLLWAY REVENUE BONDS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-303-101. Title
 14-303-102. Construction.
 14-303-103. Definitions.

SECTION.

- 14-303-104. Tollway projects declared
 public properties — Ad va-
 lorem tax exemption.

Effective Dates. Acts 1968 (1st Ex. Sess.), No. 33, § 23: Feb. 20, 1968. Emergency clause provided: "It is hereby found and declared that the construction and operation of tollway projects, as authorized by this Act, are required for the public health, safety and welfare because of the increase of commerce and vehicular travel essential to individual, city and state progress and prosperity; that moneys now available are insufficient to permit the construction of tollway

projects that can be constructed under the authority of this Act; and that realization of the public benefits sought to be accomplished by this Act depend upon the prompt undertaking of the acts authorized hereby. Therefore, it is declared, for these reasons, that an emergency exists and this Act being essential for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

14-303-101. Title.

This chapter may be referred to and cited as the "Arkansas Municipal Tollway Authority Act."

History. Acts 1968 (1st Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 76-2601.

14-303-102. Construction.

(a) This chapter shall be construed liberally.

(b) All acts and activities of an authority performed pursuant to the powers of this chapter are determined and declared by the General Assembly to be essential governmental functions. In this regard, it is determined and declared that this chapter is the sole authority necessary for the performance of the acts authorized in this chapter including, without limitation, the issuance of bonds. Specifically, it shall not be necessary for the city involved to take any action with reference to any matters concerning which authority is conferred upon an authority including, without limitation, the issuance of revenue bonds. To this

end, there is conferred upon authorities created pursuant to the provisions of this chapter the power to take action and do or cause to be done anything necessary or desirable to accomplish and implement the purposes and intent of this chapter according to the import hereof with the action taken by an authority or the things done or caused to be done by an authority pursuant to the provisions of this section being determined and declared to be ministerial rather than legislative in nature.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 21; A.S.A. 1947, § 76-2621.

14-303-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Authority" means any municipal tollway authority created pursuant to the provisions of this chapter;

(2) "Project" or "tollway project" means any expressway constructed under the provisions of this chapter by an authority including, without limitation, lands, rights-of-way, bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations, administration buildings, storage buildings, and other buildings and facilities which the authority involved may deem necessary or desirable for the operation of a tollway project, together with all property, rights, easements, rights-of-way, and interest that may be acquired by an authority for or in connection with the construction or operation of a tollway project. Each tollway project shall be separately designated by appropriate name or number and may be constructed, reconstructed, or extended in sections and stages as the authority may determine from time to time;

(3) "Costs" or "project costs" embraces all direct and indirect costs incurred in connection with the acquisition of rights-of-way for, and constructing and equipping, tollway project. This shall include, without limitation, the cost of the acquisition of all lands, rights-of-way, property, rights, easements, and interest acquired by an authority; the cost of demolishing or removing buildings or structures on the land so acquired; the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery and equipment, financing charges, interest prior to and during construction, and, for a period of not exceeding two (2) years after construction, the funding of a debt service reserve if determined to be necessary by the authority involved; the cost of traffic estimates, engineering fees, legal fees, plans, specifications, surveys, estimates of cost and revenues, any other expenses or expenditures necessary or incidental to determining the feasibility or practicability of a tollway project, administration expense, and any other expense, cost, or expenditure necessary or incidental to the construction of a tollway project, the financing of the construction, and the placing of the tollway project into operation. Any obligation, expense, or expenditure incurred or made by the State

Highway Commission with state or federal funds, or any other state or United States agency or department with the authority or approval, prior or subsequent, of an authority for matters pertaining to a tollway project including, without limitation, construction, traffic surveys, boring, preparation of plans and specifications, engineering services, and any other expenses, costs, or expenditures of whatever nature shall be regarded as a part of the costs of a tollway project and shall be reimbursed to the State Highway Commission or other agency or department of the state or United States out of the proceeds of revenue bonds hereafter authorized, or out of any other available funds of an authority;

(4) "Public roads" or "public highways" means all public highways and roads which at any time are part of the state highway system, and all roads and highways which are part of the county road system of the State of Arkansas, and all streets and roadways maintained by any municipality, improvement district, or political subdivision in the State of Arkansas;

(5) "Bonds," "tollway revenue bonds," or "revenue bonds" means revenue bonds of an authority authorized under and issued pursuant to the authority conferred by this chapter;

(6) "Owner" means all individuals, partnerships, associations, corporations, or organizations having any title or interest in any property, rights, easements, or interest authorized to be acquired by and under the authority conferred by this chapter;

(7) "Revenues" embraces all tolls, rentals, gasoline tax revenues, gifts, grants, moneys, charges, and other funds and property of whatever nature coming into the possession of, or under the control of, the authority by virtue of this chapter except the proceeds derived from the sale of revenue bonds issued under the provisions of this chapter.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 8; A.S.A. 1947, § 76-2608.

14-303-104. Tollway projects declared public properties — Ad valorem tax exemption.

All tollway projects, and all the properties thereof, are legislatively determined and declared to be public properties used exclusively for public purposes and the legislative intent is that tollway projects, and all properties thereof, shall be exempt from ad valorem taxes under and pursuant to the provisions of Arkansas Constitution, Article 16, Section 5.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 18; A.S.A. 1947, § 76-2618.

SUBCHAPTER 2 — MUNICIPAL TOLLWAY AUTHORITIES**SECTION.**

14-303-201. Creation and members.

14-303-202. Organization.

SECTION.

14-303-203. Meetings.

14-303-204. Powers and duties.

Effective Dates. Acts 1968 (1st Ex. Sess.), No. 33, § 23: Feb. 20, 1968. Emergency clause provided: "It is hereby found and declared that the construction and operation of tollway projects, as authorized by this Act, are required for the public health, safety and welfare because of the increase of commerce and vehicular travel essential to individual, city and state progress and prosperity; that moneys now available are insufficient to permit the construction of tollway

projects that can be constructed under the authority of this Act; and that realization of the public benefits sought to be accomplished by this Act depend upon the prompt undertaking of the acts authorized hereby. Therefore, it is declared, for these reasons, that an emergency exists and this Act being essential for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

14-303-201. Creation and members.

(a) Any city of the first class may by ordinance create a municipal tollway authority, herein sometimes referred to as "the authority," composed of five (5) citizens who are qualified electors of the city involved.

(b) The ordinance creating the authority shall appoint the members of the authority. Of those first appointed, one (1) shall serve for a term of one (1) year, one (1) shall serve for a term of two (2) years, one (1) shall serve for a term of three (3) years, one (1) shall serve for a term of four (4) years, and one (1) shall serve for a term of five (5) years. These terms shall be determined by lot at the first meeting of the authority. Upon the expiration of the respective terms, successor members of the authority shall be appointed by the remaining members, subject to approval of the governing body of the city involved, with each such appointee to serve for a term of five (5) years.

(c) In the event of a vacancy occurring on the authority, the remaining members of the authority, subject to the approval of the governing body of the city involved, shall appoint a member to serve the unexpired term.

(d) All members of the authority shall file the oath required by law in the State of Arkansas for public officials.

(e) Any member of the authority may be removed only for cause by the governing body of the city involved after a hearing of which the member proposed to be removed is given reasonable notice and an opportunity to be heard.

(f) Members of the authority shall receive no pay for their services but shall be entitled to actual expenses incurred in the performance of their duties as members of the authority.

History. Acts 1968 (1st Ex. Sess.), No. 33, §§ 2-4; A.S.A. 1947, §§ 76-2602 — 76-2604.

14-303-202. Organization.

(a) The authority shall elect from among its members a chairman and a secretary who shall serve for such terms as the authority shall determine.

(b) The secretary shall be the authority's disbursing agent and executive officer. The secretary shall furnish bond, with a corporate surety, in the penal sum of fifty thousand dollars (\$50,000) on the condition that he will faithfully perform his powers, functions, and duties, and properly handle all funds received and disbursed by him and account therefor. The premium on the bond shall be a proper charge against funds of the authority.

History. Acts 1968 (1st Ex. Sess.), No. 33, §§ 6, 7; A.S.A. 1947, §§ 76-2606, 76-2607.

14-303-203. Meetings.

(a) Meetings of the authority shall be held on call by the chairman or by any three (3) or more members, upon reasonable advance notice to each member, at such places as may suit the authority's convenience.

(b) A quorum for the transaction of business at any meeting shall consist of not less than three (3) members, and the affirmative vote of three (3) members shall be requisite for the authorizing or approving of any action or the passage or adoption of any motion or resolution.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 6; A.S.A. 1947, § 76-2606.

14-303-204. Powers and duties.

An authority is authorized and empowered to:

(1) Acquire, by purchase or exercise of eminent domain, sites, and rights-of-way for and to construct, reconstruct, extend, maintain, repair, and operate tollway projects as defined in this chapter at such locations within the city involved as it shall determine and, in accordance with such design and construction standards as it shall determine, subject to the approval of the State Highway Commission. In this connection, an authority is authorized to acquire, and the State Highway Commission is authorized to convey to an authority, with this to constitute the sole authority required notwithstanding the provisions of any other laws pertaining to the disposition of state property, for inclusion in a tollway project any portion of a public highway, including necessary lands and interest therein, constructed or under construction, upon such terms and for such consideration as the State

Highway Commission and the authority may agree upon. Projects shall be constructed in accordance with applicable laws pertaining to competitive bidding, contracting, performance, and payment bonds, and other matters applicable to street construction, which laws, as they may be amended or changed from time to time are incorporated by reference;

(2) Apply for, receive, accept, and use any moneys and properties from agencies of the Government of the United States of America, from any state or other governmental agency, from any public or private corporation, agency, or organization of any nature, and from any individual or group of individuals;

(3) Invest and reinvest any of its moneys;

(4) Establish accounts in one (1) or more banks, and, from time to time, make deposits in, and withdrawals from, such accounts;

(5) Contract and be contracted with;

(6) Obtain the necessary funds for financing the objects specified in this section including, without limitation, the proceeds of the sale of revenue bonds authorized by this chapter;

(7) Purchase, lease, or rent, and receive bequests or donations of, and sell or barter any real, personal or mixed property, or convert into money any property bequeathed or donated to it not needed or which cannot be used in the form received;

(8) Fix and revise from time to time, and charge and collect, tolls for transit over each tollway project constructed by it;

(9) Establish rules and regulations for the use of each tollway project;

(10) Employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, and such other employees and agents as may be necessary in its judgment and fix their compensation;

(11) Take such other action, not inconsistent with law, as may be necessary or desirable to carry out the powers and authority conferred by this chapter and carry out the intent and purposes of this chapter.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 5; A.S.A. 1947, § 76-2605.

SUBCHAPTER 3 — CONSTRUCTION OF TOLLWAY PROJECTS

SECTION.

14-303-301. Prerequisites to undertaking project.

14-303-302. Surveys, etc. on private lands.

14-303-303. Eminent domain.

14-303-304. Grade separations — Lines and grades.

SECTION.

14-303-305. Approval required to change highway location.

14-303-306. Highway vacation or relocation.

14-303-307. Relocation or removal of tollway facilities.

Effective Dates. Acts 1968 (1st Ex. Sess.), No. 33, § 23: Feb. 20, 1968. Emergency clause provided: "It is hereby found and declared that the construction and operation of tollway projects, as authorized by this Act, are required for the public health, safety and welfare because of the increase of commerce and vehicular travel essential to individual, city and state progress and prosperity; that moneys now available are insufficient to permit the construction of tollway

projects that can be constructed under the authority of this Act; and that realization of the public benefits sought to be accomplished by this Act depend upon the prompt undertaking of the acts authorized hereby. Therefore, it is declared, for these reasons, that an emergency exists and this Act being essential for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

14-303-301. Prerequisites to undertaking project.

No tollway project shall be undertaken unless and until the tollway project involved shall have been thoroughly studied with respect to traffic, engineering, costs, and financing, and unless the authority involved makes, by resolution entered in the records of that authority, a determination based upon the study that:

(1) Sufficient public funds for construction of the proposed tollway are not available; and

(2) The construction of the proposed tollway can be financed wholly through the investment of private funds in revenue bonds.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 9; A.S.A. 1947, § 76-2609.

14-303-302. Surveys, etc. on private lands.

(a) An authority, and its authorized agents and employees, may enter upon any lands, waters, and premises for the purposes of making such surveys, soundings, drillings, and examinations as they may deem necessary or desirable for the purposes of carrying out the authority conferred by this chapter. Such entries shall not be deemed trespasses, nor shall such entries for such purposes be deemed entries under any condemnation proceedings which may then be pending.

(b) An authority shall make reimbursement to the owners for any actual damage resulting to the lands, waters, and premises as a result of such activities, and reimbursements shall be part of the project costs.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 10; A.S.A. 1947, § 76-2610.

14-303-303. Eminent domain.

(a) The power of eminent domain is expressly conferred upon authorities, created pursuant to the provisions of this chapter.

(b) In the event that any lands, or interest therein, determined by an authority to be necessary for any tollway project cannot be acquired by negotiation, the authority involved is empowered to institute condemnation proceedings for the acquisition of the lands, or the interest therein, desired by it.

(c) The condemnation proceedings under the power of eminent domain may be exercised in the manner now provided for taking private property for rights-of-way for railroads as provided by §§ 18-15-1202 — 18-15-1207, as amended, or in the manner provided by §§ 18-15-301 — 18-15-307, as amended, or pursuant to any other statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain by the State of Arkansas, or by any of its officers, agencies, or departments, or by political subdivisions of the State of Arkansas.

(d) Title to, and all interest in, lands acquired by an authority, by purchase or by condemnation, shall be taken in the name of the authority involved.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 10; A.S.A. 1947, § 76-2610.

14-303-304. Grade separations — Lines and grades.

In connection with the construction of any tollway project, an authority is authorized to construct grade separations at intersections of any tollway project with public highways and to change and adjust the lines and grades of public highways so as to accommodate the lines and grades to the design of the grade separation. The cost of the grade separations and any damages incurred in connecting and adjusting the lines and grades of public highways shall be ascertained and paid by the authority involved as part of the costs of the tollway project involved.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 10; A.S.A. 1947, § 76-2610.

14-303-305. Approval required to change highway location.

An authority shall not change the location of any portion of a public highway which is a part of the state highway system without the prior approval of the State Highway Commission, nor a public highway subject to the exclusive jurisdiction of a county court without the prior approval of the county court involved.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 10; A.S.A. 1947, § 76-2610.

14-303-306. Highway vacation or relocation.

Any public highway affected by the construction of a tollway project may be vacated or relocated by an authority in the manner provided by law for the vacation or relocation of public roads. Any damages awarded on account thereof shall be paid by the authority involved as part of the project costs.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 10; A.S.A. 1947, § 76-2610.

14-303-307. Relocation or removal of tollway facilities.

Whenever an authority shall determine that it is necessary for transmission facilities, including tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances of whatever nature existing or used in connection with public and private utilities, pipeline companies, or pipeline operators which now are, or hereafter may be, located in, on, along, over, or under any tollway project, to be relocated in the tollway project, or to be removed from the tollway project, the owner or operator of the transmission facilities shall relocate or remove the transmission facilities in accordance with the order of the authority involved. However, the cost and expenses of the relocation or removal, including the cost of installing the facilities in new locations, and the cost of any lands, or any rights or interest in lands and any other rights acquired to accomplish the relocation or removal, shall be ascertained and paid by the authority involved as part of the project costs.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 10; A.S.A. 1947, § 76-2610.

SUBCHAPTER 4 — TOLLWAY PROJECT REVENUES

SECTION.

14-303-401. Powers of authority.

14-303-402. Deposit of revenues.

14-303-403. Use of revenues.

14-303-404. Pledge of revenues to pay off bonds.

SECTION.

14-303-405. Turnpike gasoline tax revenues.

Cross References. Turnpike gasoline tax revenues, § 27-71-301 et seq.

Effective Dates. Acts 1968 (1st Ex. Sess.), No. 33, § 23: Feb. 20, 1968. Emergency clause provided: "It is hereby found and declared that the construction and

operation of tollway projects, as authorized by this Act, are required for the public health, safety and welfare because of the increase of commerce and vehicular travel essential to individual, city and state progress and prosperity; that

moneys now available are insufficient to permit the construction of tollway projects that can be constructed under the authority of this Act; and that realization of the public benefits sought to be accomplished by this Act depend upon the prompt undertaking of the acts autho-

rized hereby. Therefore, it is declared, for these reasons, that an emergency exists and this Act being essential for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

14-303-401. Powers of authority.

(a) An authority is authorized to fix, revise, charge, and collect tolls for the use of each tollway project and the different parts or sections thereof; to contract with any person, partnership, association, corporation, or organization desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon telephone, telegraph, electric light or power lines, and other facilities, or for any other purpose; and to fix the terms, conditions, rents, and rates of charges for such use. However, public utilities, rural cooperatives, political subdivisions, and pipeline companies may construct and maintain crossings of tollway projects with their facilities, without charge, if the facilities are constructed and maintained in compliance with reasonable requirements of public safety, and all costs of restoring the projects to as good a condition as they were before being disturbed, are paid by the owner of the facilities.

(b) The tolls charged by an authority shall not be subject to supervision or regulation by the city involved or by any other commission, board, bureau, agency, or political subdivision of the State of Arkansas.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 11; A.S.A. 1947, § 76-2611.

14-303-402. Deposit of revenues.

The tolls and all other revenues derived from the tollway project involved, sometimes collectively referred to as "tollway project revenues," shall be deposited, as and when received, into special accounts of the authority in those depository banks or trust companies as may be designated from time to time by the authority, with the accounts to be appropriately designated to indicate the particular tollway project involved.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 11; A.S.A. 1947, § 76-2611.

14-303-403. Use of revenues.

(a) The tollway project revenues are to be used solely as authorized in this chapter.

(b) The tollway project revenues shall be used:

(1) To pay the reasonable expenses of maintenance, repair, and operation of the tollway project involved, including, without limitation, reimbursing of any state or United States agency or department for expenses paid or incurred for maintenance, repair, or operation of the tollway project involved;

(2) To pay the principal of, and interest on, all revenue bonds issued for financing the cost of the tollway project involved as the principal and interest become due, including the original issue or issues, bonds issued for reconstruction and extension, and refunding bonds, as in this chapter authorized;

(3) For the creation of such maintenance and debt service reserves as the authority involved may determine and specify in the trust indenture securing the revenue bonds involved; and

(4) For the redemption of bonds prior to maturity, if provision is made for redemption, all as shall be specified in detail in the trust indenture securing the revenue bonds involved.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 11; A.S.A. 1947, § 76-2611.

14-303-404. Pledge of revenues to pay off bonds.

(a) The pledge of tollway project revenues to the payment of the principal of and interest on the revenue bonds shall be valid and binding from the time the pledge is made.

(b) The tollway project revenues so pledged shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act.

(c) The lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against an authority, irrespective of whether the parties have notice thereof.

(d) Neither the resolution of an authority, nor any trust indenture by which a pledge is created, need be filed or recorded in any office or other place except in the records of the authority involved, and in the office of the circuit clerk and ex officio recorder of the county in which the city involved is located.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 11; A.S.A. 1947, § 76-2611.

14-303-405. Turnpike gasoline tax revenues.

(a) Reference is made to Acts 1967, No. 43 [repealed], and particularly to § 12 of Acts 1967, No. 43 [repealed].

(b) It is intended and is provided that any tollway project hereunder shall participate in "turnpike gasoline tax revenues" to the same extent as though the tollway project hereunder were a turnpike project under § 12 of that act.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 11; A.S.A. 1947, § 76-2611.

SUBCHAPTER 5 — TOLLWAY REVENUE BONDS**SECTION.**

- 14-303-501. Issuance generally.
- 14-303-502. Authorizing resolution.
- 14-303-503. Trust indenture.
- 14-303-504. Sale — Limitations.
- 14-303-505. Execution.
- 14-303-506. Obligation and liability.
- 14-303-507. Security and payment of bonds.
- 14-303-508. Default — Receiver.

SECTION.

- 14-303-509. Refunding bonds.
- 14-303-510. Revenue bonds made securities.
- 14-303-511. Bonds — Tax exemption.
- 14-303-512. Authority to operate project after completion of payments.
- 14-303-513. Studies of proposed projects — Expenses.

Effective Dates. Acts 1968 (1st Ex. Sess.), No. 33, § 23; Feb. 20, 1968. Emergency clause provided: "It is hereby found and declared that the construction and operation of tollway projects, as authorized by this Act, are required for the public health, safety and welfare because of the increase of commerce and vehicular travel essential to individual, city and state progress and prosperity; that moneys now available are insufficient to permit the construction of tollway

projects that can be constructed under the authority of this Act; and that realization of the public benefits sought to be accomplished by this Act depend upon the prompt undertaking of the acts authorized hereby. Therefore, it is declared, for these reasons, that an emergency exists and this Act being essential for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

14-303-501. Issuance generally.

(a) An authority is authorized and empowered to issue from time to time tollway revenue bonds in principal amounts sufficient to pay the costs of a tollway project.

(b) No more than one (1) tollway project may be involved as to any issue of tollway revenue bonds hereunder, but for a tollway project there may be more than one (1) issue of bonds, or there may be one (1) issue sold and delivered in series.

(c) There may also be a subsequent issue or subsequent issues of bonds for all or any of the following purposes:

- (1) Completing the construction of a tollway project;

(2) Reconstruction work on a tollway project when the amount involved is such that it cannot be handled as an item of maintenance and repair out of all tollway project revenues; or

(3) The extension of a tollway project, subject in each instance to such conditions as to the available and estimated tollway project revenues and other conditions, to insure the prompt payment of the principal and interest of subsequent bond issues, as the authority involved shall determine and specify in its resolution authorizing, or in the trust indenture securing, the bonds. In all instances, priority between and among issues and successive issues shall be controlled by the resolution of the authority authorizing the issuance of bonds or by the trust indenture securing the bonds. Tollway revenue bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 12; A.S.A. 1947, § 76-2612.

14-303-502. Authorizing resolution.

(a) Tollway revenue bonds shall be authorized by resolution of the authority involved.

(b) They may be coupon bonds payable to bearer; may be registrable as to principal only with interest coupons; or may be registrable as to both principal and interest without coupons; and may be made exchangeable for bonds of another denomination, which bonds of another denomination may in turn be either coupon bonds payable to bearer, bonds registrable as to principal only with coupons, or bonds registrable as to both principal and interest without coupons. The bonds may be in such form and denominations; the bonds may have such date or dates; the bonds may mature at such time or times; the bonds may bear interest payable at such times and at such rate or rates, provided that no bonds may bear interest at a rate exceeding seven percent (7%) per annum; the bonds may be payable at such place or places within or without the State of Arkansas; the bonds may be subject to such terms of redemption in advance of maturity at such prices, including such premiums; and the bonds may contain such terms and provisions, all as the authority involved shall determine.

(c) The authorizing resolution may contain any other terms, covenants, and conditions that are deemed desirable by the authority involved including, without limitation, those pertaining to the custody and application of bond proceeds, the maintenance of various funds and reserves, the nature and extent of the security, and the rights, duties, and obligations of the authority involved and of the holders and owners of the bonds.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 12; A.S.A. 1947, § 76-2612.

14-303-503. Trust indenture.

(a) The resolution of an authority authorizing the issuance of bonds may provide for the execution, by the authority involved with a bank or trust company within or without the State of Arkansas, of a trust indenture.

(b) The trust indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable including, without limitation, those pertaining to the custody and application of the proceeds of bonds, the collection and disposition of tollway project revenues, the maintenance of various funds and reserves, the nature and extent of the security, the rights, duties, and obligations of the authority involved, and the trustee for the holders and owners of the bonds, and the rights of the holders and owners of the bonds.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 12; A.S.A. 1947, § 76-2612.

14-303-504. Sale — Limitations.

(a) Bonds issued under the authority of this chapter shall be sold at public sale or at private sale, upon the written approval of the State Securities Commissioner based on his finding that a private sale will be in the best interest of the authority involved.

(b) Any sale of the bonds will be for a price including, without limitation, sale at a discount, and in a manner the authority involved may determine, but in no event shall the authority involved pay more than seven percent (7%) interest on the amount received, computed with relation to the absolute maturity of the bonds in accordance with the Standard Tables of Bond Values.

(c) Supplemental and dual coupons shall not be permitted, and the bonds shall not be subject to conversion.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 12; A.S.A. 1947, § 76-2612.

14-303-505. Execution.

(a) Bonds shall be executed by the manual or facsimile signature of the chairman and by the manual signature of the secretary of the authority involved.

(b) Coupons attached to the bonds shall be executed by the facsimile signature of the chairman. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery date of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

(c) Each authority shall adopt and use a seal in the execution and issuance of bonds, and each bond shall be sealed with the seal of the authority involved.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 12; A.S.A. 1947, § 76-2612.

14-303-506. Obligation and liability.

(a) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter, and the bonds issued hereunder shall be obligations only of the authority involved. In no event shall they constitute an indebtedness of the State of Arkansas or of the city involved within the meaning of any constitutional or statutory limitation or for which the faith and credit of the state or the city are pledged.

(b) No member of an authority shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purposes and intent of this chapter unless that member shall have acted with a corrupt intent.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 13; A.S.A. 1947, § 76-2613.

14-303-507. Security and payment of bonds.

(a) The principal of, and interest on, all revenue bonds issued under the authority of this chapter shall be secured solely by a pledge of, and shall be payable solely from, tollway project revenues.

(b) They shall not be secured by a statutory or forecloseable mortgage lien on the tollway project, or any of the facilities, of or in connection with, the tollway project.

(c) Each resolution authorizing the issuance of bonds, each trust indenture executed and delivered to secure the bonds, and this chapter shall constitute a contract by and between the authority involved and the holders and owners of the bonds issued under this chapter. This contract and all covenants, agreements, and obligations therein, including, without limitation, an obligation on the part of the authority involved to always operate the tollway project as a revenue producing undertaking so long as any bonds are outstanding, to properly maintain the tollway project, and to charge and collect tollway project revenues in required amounts, all as specified in detail in the resolution, the trust indenture, and in this chapter shall be promptly performed in strict accordance with the terms and provisions of the contract. The contract, all rights of the trustee and of the holders and owners of the bonds, and the obligations of the authority may be enforced by mandamus or any other appropriate proceeding at law or in equity.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 14; A.S.A. 1947, § 76-2614.

14-303-508. Default — Receiver.

(a) In the event of a default in the payment of the principal of, or interest on, any revenue bonds issued under this chapter, any court having jurisdiction may appoint a receiver to take charge of the tollway project involved.

(b) The receiver shall have the power to:

- (1) Operate and maintain the tollway project involved;
- (2) Charge and collect tolls sufficient to provide for the costs of the receivership and operating expenses of the tollway project;
- (3) Provide for the payment of the principal of and interest on the revenue bonds;
- (4) Apply the revenues derived from the tollway project in conformity with this chapter and in conformity to the resolution and indenture authorizing and securing the bonds.

(c) When the default has been cured, the receivership shall cease and the tollway project returned to the authority involved.

(d) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the holders and owners of the bonds in the resolution and indenture authorizing and securing the bonds.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 14; A.S.A. 1947, § 76-2614.

14-303-509. Refunding bonds.

(a) Revenue bonds may be issued for the purpose of refunding any bonds issued under the authority of this chapter.

(b) Such refunding bonds may be combined into a single issue with revenue bonds issued for the purpose of completing, reconstructing, or extending the tollway project.

(c) Refunding bonds may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement thereof, as shall be specified by the authority in the trust indenture securing the refunding bonds.

(d) The resolution authorizing and the trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same priority of lien on tollway project revenues pledged for their payment as was enjoyed by the bonds refunded thereby.

(e) Refunding bonds shall be sold and secured in accordance with the provisions of this chapter pertaining to the sale and security of revenue bonds.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 15; A.S.A. 1947, § 76-2615.

14-303-510. Revenue bonds made securities.

(a) Revenue bonds issued under the authority of this chapter are made securities in which all insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

(b) The revenue bonds are made securities which may properly and legally be deposited with, and received by, any state or municipal officer or any agency or political subdivision of this state for any purpose for which the deposit of bonds or obligations of this state is now or may hereafter be authorized by law.

(c) Any municipality or county; any board, commission, or other authority established by any such municipality or county, or the boards of trustees, respectively, of any retirement fund or retirement system created by, or pursuant to, authority conferred by the General Assembly may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this chapter. Bonds issued under the authority of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 16; A.S.A. 1947, § 76-2616.

14-303-511. Bonds — Tax exemption.

The principal of, and interest on, bonds issued under the authority of this chapter shall be exempt from all state, county, and municipal taxes. This exemption shall include income, inheritance, and estate taxes.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 17; A.S.A. 1947, § 76-2617.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Arkansas Constitution, Amendment 57, § 1 and § 26-3-302. The Arkansas Constitution, Amendment 57, § 1 provides that the General Assembly may classify intangible personal property for assessment at lower percentages of value

than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

14-303-512. Authority to operate project after completion of payments.

(a) Except as provided in this section, when the principal of, and interest on, all bonds issued under the authority of this chapter in connection with a particular tollway project shall have been paid, or the required provision made for their payment, and upon resolution of the authority involved filed with the city clerk of the city involved, that tollway project shall be and become part of the city's street system and shall thereafter be operated by the city free of tolls and charges.

(b) At the time of the final payment of principal and interest, or the making of adequate provision therefor, of outstanding revenue bonds with reference to a particular tollway project, the authority involved may determine and declare, by resolution entered in its records, that the tollway project involved is not to become part of the city street system, but is to continue to be operated. The tollway project revenues derived therefrom over and above expenses of maintenance, repair, and operation are to be pledged to and used for the payment of revenue bonds issued for financing the cost of another tollway project. However, no such pledge or use of tollway revenues for the payment of the principal and interest of bonds for any other tollway project shall be undertaken until the principal and interest of all outstanding bonds of the tollway project involved shall have been fully paid, or the required provision made for their payment.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 19; A.S.A. 1947, § 76-2619.

14-303-513. Studies of proposed projects — Expenses.

(a) An authority and the State Highway Commission are authorized to enter into arrangements or to enter into agreements, as may be determined by them to be necessary or desirable for:

- (1) The investigation and study of any proposed tollway project;
- (2) The use of State Highway Commission engineering and other forces, including consulting engineers and traffic engineers;
- (3) The purpose of effecting such study; or
- (4) The obtaining and use of outside engineering and traffic and other expert studies; all as may be necessary or desirable in connection with a proposed tollway project, with all expenses in connection therewith, which are paid by the State Highway Commission, to be deemed part of the project costs.

(b) Upon the sale of bonds all such expenses incurred by the State Highway Commission are to be reimbursed to that commission out of the proceeds of the bonds.

History. Acts 1968 (1st Ex. Sess.), No. 33, § 20; A.S.A. 1947, § 76-2620.

CHAPTER 304

PARKING AUTHORITIES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REVENUE BONDS.

RESEARCH REFERENCES

ALR. Loss of automobile left at parking lot or garage. 13 ALR 4th 362.	Parking facility proprietor's liability for criminal attack on patron. 49 ALR 4th 1257.
Damage to automobile left in parking lot or garage. 13 ALR 4th 442.	

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-304-101. Declaration of policy.
- 14-304-102. Definition.
- 14-304-103. Creation.
- 14-304-104. Members.
- 14-304-105. Personnel.
- 14-304-106. Authority to establish and supervise facilities — Prohibitions.

SECTION.

- 14-304-107. Authority to contract.
- 14-304-108. Planning, designing, and locating facilities.
- 14-304-109. Acquisition of property and property rights.
- 14-304-110. Construction of facilities.
- 14-304-111. Records and reporting.

Cross References. Local government reserve funds, § 14-73-101 et seq.

Effective Dates. Acts 1949, No. 468, § 12: Mar. 29, 1949.

14-304-101. Declaration of policy.

The General Assembly determines and declares that:

(1) Excessive curb parking of motor vehicles on roads and streets in the cities and towns of the State of Arkansas and the lack of adequate off-street parking facilities create congestion, obstruct the free circulation of traffic, diminish property values, and endanger the health, safety, and general welfare of the public;

(2) The provision of conveniently located off-street parking facilities is therefore necessary to alleviate those conditions; and

(3) The establishment of public off-street automobile parking facilities is deemed to be a proper public or municipal purpose.

History. Acts 1949, No. 468, § 1;
A.S.A. 1947, § 19-4901.

14-304-102. Definition.

As used in this chapter, unless the context otherwise requires, "public off-street automobile parking facilities" means accommodations provided by public authority for the parking of automobiles off the street or highway, and open to public use, with or without charge. Parking facilities may:

- (1) Consist of lots, garages, or other structures and accessories;
- (2) Be surface facilities or facilities above or below the ground.

History. Acts 1949, No. 468, § 2;
A.S.A. 1947, § 19-4902.

14-304-103. Creation.

The city council or other governing body of cities and towns is authorized to create a parking authority within its jurisdiction for the purpose of establishing public off-street automobile parking facilities.

History. Acts 1949, No. 468, § 3;
A.S.A. 1947, § 19-4903.

14-304-104. Members.

(a) The parking authority shall consist of five (5) members.

(b) The members shall be appointed by the mayor and approved by the council or other legislative body of the city creating the authority, and they shall be qualified electors residing in the city or incorporated town. They cannot hold any elective office of the city, county, or state.

(c) The members of the authority shall be appointed for periods of one (1), two (2), three (3), four (4), and five (5) years, respectively, so that the term of one (1) member shall expire each year after the creation of the authority.

(d) Upon the termination of office of each member, his successor shall be appointed for a term of five (5) years and shall serve until his successor shall have been appointed and qualified.

(e) The members of the authority shall receive no compensation for their services.

History. Acts 1949, No. 468, § 3;
A.S.A. 1947, § 19-4903.

14-304-105. Personnel.

(a) The authority shall have authority to employ such persons as it deems necessary in furtherance of its duties hereunder.

(b) The employees authorized by this chapter shall be chosen by the civil service commission of the respective city or town in the manner now required by law.

History. Acts 1949, No. 468, §§ 3, 11;
A.S.A. 1947, §§ 19-4903, 19-4911.

14-304-106. Authority to establish and supervise facilities — Prohibitions.

(a) The parking authority of the cities and towns, acting alone or in cooperation with other parking authorities or with any federal or state agency, is authorized to:

(1) Plan, design, locate, finance, acquire, and own property for, and construct, alter, enlarge, use, maintain, operate, and lease off-street automobile parking facilities wherever and to the extent that the facilities are deemed necessary within its respective jurisdiction; and

(2) Supervise and control all other matters pertaining to the parking of vehicles.

(b) However, the sale, storage, or dispensing of any product used in or for the servicing of motor vehicles shall not be permitted on or in connection with parking facilities.

History. Acts 1949, No. 468, § 4;
A.S.A. 1947, § 19-4904.

14-304-107. Authority to contract.

(a) Any municipal parking authority created pursuant to the provisions of this chapter, is authorized to enter into contracts with any other public agency or with any private person or firm for the operation, maintenance, and management of any one (1) or more off-street automobile parking facilities established by the authority.

(b) Any contract shall be for such term, not to exceed twenty (20) years, and may contain such provisions as shall be approved by the parking authority.

(c) The contract shall be an obligation only of the authority, payable solely from revenues derived from parking facilities under the jurisdiction of the authority, and shall not constitute an obligation or indebtedness of the municipality within the meaning of any constitutional or statutory limitations.

(d) All such contracts entered into prior to June 28, 1985, are ratified and confirmed.

History. Acts 1985, No. 878, § 1;
A.S.A. 1947, § 19-4914.

14-304-108. Planning, designing, and locating facilities.

(a) The parking authority, after a thorough investigation of the parking problem within its jurisdiction, shall formulate for public presentation a master plan of automobile parking facilities as a guide for the further provision for parking facilities, properly integrated with present and proposed traffic facilities, subject to alteration as necessary.

(b) A program of construction and method of financing shall likewise be formulated.

(c) The parking authority is authorized to so design and locate any off-street automobile parking facilities as to best serve the public purpose for which such facilities are intended.

(d) Such facilities may consist of:

- (1) Lots, improved or unimproved;
- (2) Single or multi-level garages; or
- (3) Other structures and accessories.

History. Acts 1949, No. 468, §§ 5, 6;
A.S.A. 1947, §§ 19-4905, 19-4906.

14-304-109. Acquisition of property and property rights.

For the purpose of this chapter, the parking authority is authorized to acquire private or public, real or personal property and property rights, above, at, or below the surface of the earth necessary for off-street automobile parking facilities by purchase, eminent domain, gift, lease, or otherwise.

History. Acts 1949, No. 468, § 8;
A.S.A. 1947, § 19-4908.

14-304-110. Construction of facilities.

(a) The parking authority is authorized to construct or cause to be constructed public off-street automobile parking facilities above, at, or below the surface of the earth including buildings, structures, equipment, entrances, exits, fencing, and all other accessories necessary or desirable for the safety or convenience of motorists using the facilities.

(b) The contracts for any of the above are to be awarded to the lowest responsible bidder in the same manner as contracts are authorized by law to be awarded in connection with highways or streets within the jurisdiction of the respective parking authority.

History. Acts 1949, No. 468, § 9;
A.S.A. 1947, § 19-4909.

14-304-111. Records and reporting.

Every parking authority shall maintain proper accounting and financial records of all transactions and provide and file annual financial statements with the city clerk.

History. Acts 1949, No. 468, § 10;
A.S.A. 1947, § 19-4910.

SUBCHAPTER 2 — REVENUE BONDS

SECTION.

- 14-304-201. Authorization to issue revenue bonds.
- 14-304-202. Ordinance — Interest and maturity of bonds.
- 14-304-203. Statutory mortgage lien — Pledging revenues.
- 14-304-204. Notice — Hearing.
- 14-304-205. Issuance of bonds.

SECTION.

- 14-304-206. Payment.
- 14-304-207. Enforcement of mortgage lien.
- 14-304-208. Parking rates — Surplus.
- 14-304-209. Accounting system.
- 14-304-210. Acceleration of bond maturities — Indenture.

Cross References. Local Government Bond Act of 1985, § 14-164-301 et seq.

Effective Dates. Acts 1949, No. 468, § 12: Mar. 29, 1949.

"Acts 1970 (Ex. Sess.), No. 33, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum in-

terest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Municipal Improvement Bonds in Arkansas, 8 Ark. L. Rev. 146. **Amendment 62: Clearing Up a Serbonian Bog**, 39 Ark. L. Rev. 499.
Comment, **Municipal Bonds** and

14-304-201. Authorization to issue revenue bonds.

The city council or other legislative body of any city or town desiring to provide parking facilities as provided in this chapter are authorized to issue revenue bonds or other evidences of indebtedness to finance the planning, designing, acquisition of property for, construction, alteration, enlargement, maintenance, or operation of parking facilities by the procedure set out in this subchapter.

History. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-202. Ordinance — Interest and maturity of bonds.

The city council or other legislative body of any city or town shall by ordinance provide for the issuance of revenue bonds. The ordinance shall set forth a brief description of the contemplated improvement, the estimated cost thereof, the amount, rate of interest, time, and place of payment, and other details in connection with the issuance of the bonds. The bonds shall bear interest at such rate or rates, payable semiannually, and shall be payable at the times and places, not exceeding forty (40) years from their date, as shall be prescribed in the ordinance providing for their issuance.

History. Acts 1949, No. 468, § 7; 1970 § 5; 1981, No. 425, § 5; A.S.A. 1947, (Ex. Sess.), No. 33, § 1; 1975, No. 225, § 19-4907.

14-304-203. Statutory mortgage lien — Pledging revenues.

(a) The ordinance may provide that a statutory mortgage lien shall exist upon the property to be acquired and all construction thereon, provided that the city or the authority of the city acquires the fee simple title to such property and makes a charge for parking vehicles in the parking facilities.

(b) The ordinance may provide for the pledging of revenues derived from operation of the parking facilities or it may provide for the pledging of revenues derived from operation of the parking meters of the city or it may provide for the pledging of both sources of revenues for the purpose of paying the bonds and other evidences of indebtedness and interest thereon, which pledge shall definitely fix and determine the amount of revenue which shall be necessary to be set apart and applied to the payment of the principal of and interest on the bonds or other evidences of indebtedness and the proportion of the balance of such

revenues and incomes which are to be set aside as a proper and adequate depreciation account. The remainder shall be set aside for the reasonable and proper operation thereof.

History. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-204. Notice — Hearing.

(a) After the ordinance has been adopted, the ordinance shall be published one (1) time in a newspaper published in the city or town with a notice to all persons concerned, stating that the ordinance has been adopted, that the city or town contemplates the issuance of the bonds described in the ordinance, and that any person interested may appear before the governing body upon a certain date which shall not be less than ten (10) days subsequent to the publication of the ordinance and notice and present protest.

(b) At the hearing all objections and suggestions shall be heard, and the legislative body shall take the action it shall deem proper in the premises.

History. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-205. Issuance of bonds.

(a) Bonds provided for in this subchapter shall be issued in an amount necessary to provide sufficient funds to pay all costs of planning, designing, acquisition of property for, construction, alteration, enlargement, and other expenses, together with interest to a date six (6) months subsequent to the estimated date of completion.

(b) Bonds issued under the provisions of this chapter are declared to be negotiable instruments, and the bonds shall be executed by the presiding officer and clerk or recorder of the corporate town and bear the corporate seal. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before delivery of the bonds, their signatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until delivery.

(c) The bonds may be sold at not less than ninety cents (90¢) on the dollar, and the proceeds derived therefrom shall be used exclusively for the purposes for which the bonds were issued.

History. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-206. Payment.

Bonds or other evidences of indebtedness issued under the provisions of this statute shall be payable solely from the revenues derived from the parking facilities or revenues derived from operation of parking meters in the city. The bonds or evidences of indebtedness shall not in any event constitute an indebtedness of the city or town within the meaning of the constitutional provisions or limitations, and it shall be plainly stated on the face of each bond or evidence of indebtedness that the bond or evidence of indebtedness has been issued under the provisions of this chapter and that it does not constitute an indebtedness of the city or town.

History. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-207. Enforcement of mortgage lien.

(a) There shall be created a statutory mortgage lien upon the parking facilities so acquired or constructed from the proceeds of bonds authorized to be issued, which shall exist in favor of the holder of the bonds, and each of them, and in favor of the holder of the coupons attached to the bonds.

(b) The parking facilities shall remain subject to the statutory mortgage lien until payment in full of the principal and interest of the bonds subject to restrictions contained in the indenture authorized in § 14-304-210, any holder of bonds issued under the provisions of this chapter, or of the coupons representing interest accrued thereon, may either at law or in equity enforce the statutory mortgage lien conferred by this section, and may by proper suit compel the performance of the duties of the officials of the issuing city or town.

(c) If there is default in the payment of the principal of an interest on any of the bonds, any court having jurisdiction in any proper action may appoint a receiver to administer the parking facilities on behalf of the city or town, with power to charge and collect rates sufficient to provide for the payment of the bonds and interest thereon, and for the payment of the operating expenses, and to apply the income and revenues in conformity with this chapter and the ordinance providing for the issuance of the bonds.

History. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-208. Parking rates — Surplus.

(a) The rates for parking facilities fixed precedent to the issuance of bonds shall not be reduced until all of the bonds shall have been fully paid and shall wherever necessary be increased and in amounts sufficient to provide proper funds for the depreciation account and operation and maintenance charges. However, the rates may be reduced subject to any conditions which may be set out in the ordinance authorizing the issuance of the bonds of the trust indenture hereinafter referred to.

(b) If any surplus shall be accumulated in the operating and maintenance fund which shall be in excess of the cost of maintaining and operating the parking facilities during the remainder of the fiscal year then current and the cost of maintaining and operating the facilities during the fiscal year then next ensuing, then the excess may be transferred by the legislative body to either the depreciation account or other bond and interest redemption account.

(c) If a surplus shall exist in the bond or interest redemption account, the surplus may be applied to the payment of any outstanding unmatured bonds payable from the bond and interest redemption account that may be subject to call for redemption before maturity.

History. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-209. Accounting system.

(a) Any municipality issuing revenue bonds under the provisions of this chapter shall install and maintain a proper system of accounts.

(b) The system of accounts shall be properly audited by a competent auditor, and the report of such audit shall be open to the public for inspection.

(c) The treasurer of the municipality shall be custodian of the funds derived from income received from the parking facilities, and all of the funds received as such income shall be kept separate and apart from the other funds of the city.

History. Acts 1949, No. 468, § 7; 1970 (Ex. Sess.), No. 33, § 1; A.S.A. 1947, § 19-4907.

14-304-210. Acceleration of bond maturities — Indenture.

(a) The ordinance authorizing the issuance of the revenue bonds may contain provisions for the acceleration of the maturities of all unmatured bonds in the event of default in the payment of any principal or interest maturing under the bond issue or upon failure to meet any sinking fund requirements or in any other event stipulated in the ordinance and the provisions will be binding.

(b) The ordinance may also, if deemed desirable:

(1) Provide for execution, contemporaneous with the execution of bonds, by the municipality of an indenture defining the rights of the bondholders inter sese;

(2) Appoint a trustee for the bondholders;

(3) Provide for a priority of lien as between successive bond issues;

(4) Provide for the acceleration of bond maturities;

(5) Contain any covenants on the part of the municipality relating to the construction or acquisition of the parking facilities or the application or safeguarding of the proceeds of the bonds, or other covenants intended for the protection of the bondholders and containing any other provisions which are consistent with the terms of this chapter and which may be deemed desirable.

History. Acts 1949, No. 468, § 7; 1970
(Ex. Sess.), No. 33, § 1; A.S.A. 1947,
§ 19-4907.

CHAPTERS 305-314

[Reserved]

SUBTITLE 19. ROADWAYS, BRIDGES, AND PARKING IMPROVEMENT DISTRICTS

CHAPTER 315

GENERAL PROVISIONS

[Reserved]

CHAPTER 316

ROAD IMPROVEMENT DISTRICTS GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. COLLECTION AND DISPOSITION OF TAXES GENERALLY.
3. COLLECTION OF DELINQUENT ASSESSMENTS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-316-101. Road improvement tax generally.
- 14-316-102. Bonds of road improvement districts validated.
- 14-316-103. Funding and refunding outstanding bonded indebtedness.
- 14-316-104. Allotment of funds where

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- improvement districts embrace lands in more than one county.
- 14-316-105. Cancellation of records of unsatisfied liens when there are no unsatisfied obligations.
- 14-316-106. Cancellation of assessment liens when roads are

SECTION.

taken by state or no bonds were issued.

14-316-107. Cancellation of district-acquired delinquent tax title.

SECTION.

14-316-108. Road and school district boundaries to be coextensive.

14-316-109. Route change to avoid dangerous railroad crossing.

Preambles. Acts 1925, No. 203 contained a preamble which read: "Whereas, the wisdom of avoiding railroad grade crossings is becoming more and more apparent; and

"Whereas, the United States Government refuses to give aid to sections of roads that have dangerous railroad crossings that could, in the opinion of the Government engineers be avoided by slight changes in route, which sometimes cause slight additions to the length of the road, which extra cost if any, would in most cases be far more than offset by federal aid not otherwise obtainable; and

"Whereas, railroad companies realize fully the importance of avoiding grade crossings and are very frequently willing to make cash donations to the district to enable the district to make such changes or additions as will enable the traveling public to avoid dangerous grade crossings; and

"Whereas, in most road and highway districts the commissioners are given expressed authority to change and alter the route of the road, but in some districts no such authority is given the Board of Commissioners to alter the route; and

"Whereas, such authority in a limited degree should be extended to all road districts which have not completed their work...."

Effective Dates. Acts 1921, No. 223, § 2: approved Mar. 3, 1921. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared, and it shall take effect and be in force immediately after its passage."

Acts 1923 (1st Ex. Sess.), No. 53, § 2: Oct. 30, 1923. Emergency declared.

Acts 1925, No. 203, § 3: Mar. 25, 1925. Emergency declared.

Acts 1927, No. 137, § 3: approved Mar. 10, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace,

health and safety an emergency is hereby declared to exist in this, that the purchasers of bonds herein referred to may, in some instance, question the acts and proceedings of road commissioners of various districts throughout the State in issuing and causing to be issued bonds as aforesaid, thereby depressing the sale price of said bonds to the great injury of the people of the State of Arkansas, and this act shall take effect and be in force from and after its passage."

Acts 1939, No. 74, § 3: Feb. 11, 1939. Emergency declared.

Acts 1945, No. 23, § 4: approved Mar. 20, 1945. Emergency clause provided: "Whereas, the title to lands within the limits of previous road improvement districts in the state is clouded by many unsatisfied liens of assessed benefits and mortgages although all debts of such improvement districts have been paid, making it impossible for owners to give a good title to such lands; and, whereas, it is unjust that such conditions continue, and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1945, No. 199, § 5: approved Mar. 7, 1945. Emergency clause provided: "It has been found and it is hereby determined by the General Assembly that some road improvement districts of the State are paying interest rates on their outstanding bonds which have not been refunded by state bonds or on judgments on such bonds higher than those at which they might be refunded; that unprecedentedly low interest rates now prevail which have created a market advantageous to the issuance of refunding bonds; that the duration of said low interest rates is uncertain for the reason that Congress may shortly enact a statute taxing the interest upon future issues of such bonds which would render the refunding

of the outstanding bonds impracticable, if not impossible; that such road improvement districts should take advantage of the present favorable market and their failure to do so would result in great financial detriment to taxpayers; that for said reasons it is hereby declared necessary for the preservation of the public peace, health and safety, that this act shall become effective without delay. An emergency therefore exists and this act shall take effect and be in force from and after its passage."

Acts 1949, No. 317, § 4: approved Mar.

19, 1949. Emergency clause provided: "Whereas, the title to many tracts of land within the limits of previous road improvement districts in this state are clouded making it impossible for the owners to give good title thereto; and, whereas, it is unjust this condition continue, and this act being necessary for the immediate preservation of the peace, health and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

CASE NOTES

ANALYSIS

Construction.
Applicability.

Construction.

Section 14-86-1101 et seq., relating to the collection of delinquent highway improvement taxes, does not outline the method of procedure to foreclose liens for

taxes, and does not impliedly repeal this subchapter. *Beasley v. Hornor*, 173 Ark. 295, 292 S.W. 130 (1927).

Applicability.

This subchapter is valid, and applies to sales made after its passage, even in districts created before. *Northern Rd. Imp. Dist. v. Meyerman*, 169 Ark. 383, 275 S.W. 762 (1925).

14-316-101. Road improvement tax generally.

(a) All taxes levied by road improvement districts in this state, whether organized under general or special laws, shall be payable between the first Monday in January and April 10 of each year.

(b) This section shall not apply to Greene County.

History. Acts 1921, No. 223, § 1; Pope's Dig., § 13825; A.S.A. 1947, § 76-1218.

14-316-102. Bonds of road improvement districts validated.

(a) All acts and proceedings of commissioners of road improvement districts heretofore organized in the State of Arkansas under the general road law, commonly known as the Alexander Road Law, or under special acts, where bonds have been issued for the purpose of paying valid indebtedness of the districts and where the bonds have been delivered prior to January 1, 1927, are declared to be valid acts and proceedings as if all proceedings and formalities required by law had been fully complied with.

(b) All bonds so issued by the districts in payment of valid indebtedness thereof are valid and binding obligations upon the districts under all laws of this state as if all proceedings and formalities pertaining to

the issuance of the bonds as required by law had been fully complied with.

(c) However, this section shall not affect or make valid any fraudulent acts on the part of commissioners of those districts and shall not validate any fraudulent issuance of bonds by the districts.

History. Acts 1927, No. 137, § 1;
Pope's Dig., § 6539; A.S.A. 1947,
§ 76-1223.

14-316-103. Funding and refunding outstanding bonded indebtedness.

(a) Any road improvement districts of this state, whether organized and created under general law or by special act of the General Assembly, shall have power to fund and refund its outstanding valid bonded indebtedness or judgments on its bonded indebtedness and accrued matured interest thereon on such terms as the commissioners or directors of the districts shall deem for the best interest of the districts and, to that end, may issue the negotiable bonds of the districts, with interest coupons attached.

(b)(1) The commissioners or directors of the districts may exchange new bonds for the outstanding bonds, including accrued matured interest coupons, or may issue and sell the new bonds and use the proceeds thereof to pay the outstanding bonds or judgments and accrued interest thereon.

(2) The refunding bonds shall not be issued in a greater amount than is necessary to pay the outstanding bonds or judgments and accrued interest thereon to the date of the refunding bonds, plus printing, trustee, legal, and other necessary expenses incurred in connection with the issuance of the refunding bonds.

(3) No refunding bonds shall bear a greater rate of interest than three percent (3%) per annum, nor shall they be disposed of at less than par. However, bonds bearing a lower rate of interest than three percent (3%) per annum may be sold at a discount on a basis whereby the district shall not be required to pay approximately more than if the bonds had been sold at par bearing three percent (3%) interest.

(4) All such refunding bonds:

(A) Shall be negotiable instruments and may have coupons evidencing interest, payable at annual or semiannual periods;

(B) Shall have all the rights of security, including liens on assessment of benefits and levy of taxes on the lands, together with all remedies for their collection that are provided for the bonds to be refunded or the bonds on which the judgments to be refunded are based; and

(C) May be further secured by a pledge and mortgage of the assessment benefits and taxes in the district, to be executed by the directors or commissioners.

History. Acts 1945, No. 199, §§ 1, 2;
A.S.A. 1947, §§ 76-1221, 76-1222.

14-316-104. Allotment of funds where improvement districts embrace lands in more than one county.

In those situations where the boundaries of a road improvement district embrace lands in more than one (1) county and any of the counties have available funds, either directly from the State Treasury or by action of the quorum court, to apply on the bonded indebtedness of road improvement districts in that county, the basis of ascertaining the proportion of the bonded indebtedness owing by the road improvement district that should be considered in allotting funds to road improvement districts in that county shall be the relation that the assessment of benefits in that county bears to the assessment of benefits in the road improvement district. The percentage that the assessment of such benefits in any of such counties is of the entire assessment of benefits in such district shall be the percentage of the bonds of such district entitled to allotments in that county.

History. Acts 1923 (1st Ex. Sess.), No. 53, § 1; Pope's Dig., § 13895; A.S.A. 1947, § 76-1217.

14-316-105. Cancellation of records of unsatisfied liens when there are no unsatisfied obligations.

(a) Whenever it shall appear to the chancery court of any county, upon the petition of any interested person, that there is of record any unsatisfied lien by virtue of any assessment of benefits or mortgage created under the authority of any general or special road improvement district laws of this state, and that all assessments, bonds, or other obligations of the road improvement district, to secure the payment thereof, have been paid; or that such improvement has been completed or abandoned without the issuance of bonds and there are no unpaid obligations of that district, but there remains of record the unsatisfied lien of assessment of benefits against the lands within that district, the chancery court shall, if it finds the allegations of the petition to be true, enter an order cancelling the unsatisfied liens of assessment and setting aside any judgment theretofore rendered in the court for foreclosure of any delinquent assessments, penalties, and costs then remaining unsatisfied. The court shall also have the power to cancel, set aside, and hold for naught any title held by any district coming under the terms and provisions of this section.

(b) Upon the rendition of the order or decree by the chancery court, the circuit clerk or chancery clerk, as the case may be, is empowered and directed to enter upon the proper record in his office a satisfaction of the mortgage, delinquent assessment of benefits, or other court order or instrument creating a lien against the lands within the district, and a release of the lien thereunder.

History. Acts 1945, No. 237, §§ 1, 2;
A.S.A. 1947, §§ 76-1219, 76-1220.

14-316-106. Cancellation of assessment liens when roads are taken by state or no bonds were issued.

All liens are cancelled when:

(1) There is of record any unsatisfied lien by virtue of any assessment, pledge, or mortgage, delinquent record, or decree of foreclosure made or created under authority of any general or special law relating to a road improvement district of this state or bridge improvement district of which all bonds and other obligations of the district have been paid, and the district has been completely absorbed or taken over by the state or by the Arkansas State Highway and Transportation Department; or

(2) The improvements have been completed or abandoned without the issuance of bonds, there are no outstanding obligations of the district, and there remains of record an assessment of benefits lien against the lands of the district.

History. Acts 1949, No. 317, § 1;
A.S.A. 1947, § 76-1224.

14-316-107. Cancellation of district-acquired delinquent tax title.

In the event there has been a sale to the district of any lands for delinquent taxes and some manner of title is still held by the district, the title so acquired is divested out of the district, cancelled, and held for naught. The title shall in no wise constitute a lien on the property or a cloud on the title to the property.

History. Acts 1949, No. 317, § 2;
A.S.A. 1947, § 76-1225.

14-316-108. Road and school district boundaries to be coextensive.

When any road district in the State of Arkansas dissects any school district in this state wherein the lands and property of a majority of the property owners in the school district lie in an adjoining road district but in the same school district, the boundary lines of the road district so dissecting shall follow and be the same as the boundary lines of the school district.

History. Acts 1939, No. 74, § 1; A.S.A.
1947, § 76-1216.

14-316-109. Route change to avoid dangerous railroad crossing.

(a) In road and highway districts where the act creating the district, and amendments thereto, do not permit a change in plans of the district or where by act of the General Assembly the roads to be built are specifically defined or otherwise limited, and where the road is not completed and a minor change in route or an addition to the road would enable the traveling public to avoid a dangerous railroad grade crossing, the board of commissioners is authorized to make the minor changes in route or to make an addition to the roads to be built that will enable the traveling public to avoid a dangerous grade crossing. If the change in route or addition to the road is not planned over existing public roads, then the change or addition shall only be made with the approval of the county court. The commissioners shall then lay out a public road over the proposed route if the court approves the change or addition.

(b) If it is necessary to increase the assessed benefits or to increase the annual levy of any district, both in acreage and assessed valuation of property, in order to make a change in route or addition to a road in order to enable the traveling public to avoid a dangerous grade crossing, then the change shall only be made with the consent of a majority of the landowners of the district.

History. Acts 1925, No. 203, §§ 1, 2; Pope's Dig., §§ 6537, 6538; A.S.A. 1947, §§ 76-1214, 76-1215.

CASE NOTES**Minor Changes.**

Changes in the route of a road to be improved under former statute had to be consistent with the original improvement plans. *Wilson v. Rambo*, 180 Ark. 226, 21 S.W.2d 158 (1929) (decision under prior law).

Where a proposed road improvement

traversed the entire county, changes in the improvement which would eliminate two right angles in a city and shorten the distance 400 or 500 feet were not material and were within the power of the road improvement commissioners. *Wilson v. Rambo*, 180 Ark. 226, 21 S.W.2d 158 (1929) (decision under prior law).

**SUBCHAPTER 2 — COLLECTION AND DISPOSITION OF TAXES
GENERALLY****SECTION.**

- 14-316-201. Penalty and enforcement.
- 14-316-202. Examination of records by commission — Liability for wrongful use of funds.
- 14-316-203. Districts with roads wholly within the state highway system — Annual report.
- 14-316-204. Remission of funds for paying bonded indebtedness and interest.

SECTION.

- 14-316-205. Districts with roads not wholly within state highway system — Tax levy — Sale of certificates of indebtedness — Saving clause.
- 14-316-206. Maintenance of roads not wholly within the state highway system — Use of funds — Cooperation with

SECTION.

State Highway Commission — Annual report.

14-316-207. Payment of outstanding indebtedness and bonds by funds derived from taxes.

14-316-208. Tax collection prohibited ex-

SECTION.

cept to pay bonds and interest.

14-316-209. Use of funds — County road tax vested in county — Repayment of advances.

Publisher's Notes. As to applicability of certain laws to municipal improvement districts existing prior to July 1, 1952, see §§ 14-90-102 and 14-90-103.

Acts 1927, No. 112, § 18, provided that the act applied only to road improvement districts affected by Acts 1927, No. 11.

Cross References. Payment of improvement district taxes with bonds of district, § 14-86-803.

Effective Dates. Acts 1927, No. 112, § 21: approved Mar. 4, 1927. Emergency clause provided: "It is ascertained and hereby declared that the handling of road revenues as provided in this act is essential to the maintenance and hasty repair of the public roads of the state; that the defective condition of the public roads referred to in this act is a standing menace to the traveling public, endangering their

safety, and that the immediate operation of this act is essential for the protection of the public safety; and an emergency is therefore declared, and this act shall take effect and be in force from and after its passage."

Acts 1939, No. 32, § 3: approved Feb. 2, 1939. Emergency clause provided: "Because of a great waste in road district affairs and because there is a great number of needed roads within said improved road districts such as farm-to-market roads which are in dire need of repair and of the increase in benefits to free holders within said improved districts, and this act being essential for the protection of public safety an emergency is therefore declared to exist, and this act shall take effect and be in force from and after its passage."

14-316-201. Penalty and enforcement.

(a) Any commissioner, officer, agent, or employee of any district who shall wilfully fail or refuse to comply with, or who shall knowingly violate, any of the provisions of this subchapter, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(b) The provisions of this subchapter may be enforced by mandamus at the instance of the State Highway Commission or of any interested landowner.

History. Acts 1927, No. 112, §§ 15, 20; A.S.A. 1947, § 76-1213.

14-316-202. Examination of records by commission — Liability for wrongful use of funds.

(a) The State Highway Commission:

(1) Shall have authority to examine the books, records, and accounts of road districts and to have them audited; and

(2) May take any other steps necessary to ascertain the exact status and assets of a road district.

(b) Any commissioner, officer, agent, or employee of a road district wrongfully using or permitting the wrongful use of district funds shall be personally liable therefor. The Attorney General, at the request of the commission, shall prosecute the necessary suit, in the name of the district, to enforce that liability.

History. Acts 1927, No. 112, § 3;
A.S.A. 1947, § 76-1202.

CASE NOTES

Cited: State ex rel. Attorney Gen. v. Little Rock Highland Paving Dist. No. 24, 199 Ark. 430, 133 S.W.2d 878 (1940).

14-316-203. Districts with roads wholly within the state highway system — Annual report.

(a) On or before January 10 of each year, the commissioners of road districts whose roads, exclusive of any portion within the corporate limits of any city or town of more than two thousand five-hundred (2,500) inhabitants, are wholly included in the state highway system shall file a report with the State Highway Commission showing:

(1) The cash on hand, the amount of delinquent taxes, and all other assets; and

(2) All receipts and disbursements during the previous year.

(b) The report shall state the date of each voucher drawn, the amount, to whom payable, and for what purpose issued.

History. Acts 1927, No. 112, § 2;
A.S.A. 1947, § 76-1201.

CASE NOTES

Cited: State ex rel. Attorney Gen. v. Parkin Rd. Imp. Dist. v. English, 199 Ark. Little Rock Highland Paving Dist. No. 24, 199 Ark. 430, 133 S.W.2d 878 (1940); 702, 136 S.W.2d 190 (1940).

14-316-204. Remission of funds for paying bonded indebtedness and interest.

(a) When directed by the State Highway Commission, the commissioners of road districts referred to in § 14-316-203 shall remit all funds on hand from any and all sources, or so much thereof as may be necessary, to the bank or trust company named as payee in the deed of trust securing the bonds of the district, for the purpose of paying the bonds and interest as they mature, to the extent of the funds. However, the districts may retain sufficient amounts of the funds on hand to take care of existing contracts.

(b) In making the allotment provided for in section 3 of Act No. 11, approved February 4, 1927, [superseded], the commission shall only

allot to the districts referred to in § 14-316-203 having funds on hand in an amount which, when added to the funds, will be sufficient to meet the maturing bonds and interest of the district, with the paying charge on that amount.

History. Acts 1927, No. 112, § 4;
A.S.A. 1947, § 76-1203.

CASE NOTES

Toll Bridges.

Where bridge was made part of state highway system, surplus collected from tolls was part of the assets of the district

which was to be paid to state. *Red River Bridge Dist. v. State ex rel. State Hwy. Comm'n*, 201 Ark. 365, 144 S.W.2d 723 (1940).

14-316-205. Districts with roads not wholly within state highway system — Tax levy — Sale of certificates of indebtedness — Saving clause.

With the approval of the county court, the commissioners in each district whose roads are not wholly included in the state highway system may annually, as necessary, levy a tax not to exceed one percent (1%) on the assessed benefits in the district for the purpose of constructing, repairing, and maintaining roads within the district which are not included in the state highway system. For that purpose, in order not to delay such necessary work, the road improvement district may issue and sell certificates of indebtedness, bearing interest at a rate not exceeding six percent (6%) per annum and for an amount not exceeding one (1) annual tax. These certificates shall be negotiable, shall mature and be made payable within one (1) year after their issuance, and shall constitute a lien and charge against the funds of the district. This section shall not repeal Acts 1923, No. 180, § 1.

History. Acts 1927, No. 112, § 9; 1939, No. 32, § 1; A.S.A. 1947, § 76-1206.

Publisher's Notes. Acts 1923, No. 180

referred to in this section, is a special act dealing with the Wilmot Road District.

CASE NOTES

ANALYSIS

Approval of county court.
Special acts.

Approval of County Court.

Where no approval was had of the county court as required by this section, chancery court could not levy a tax for the purpose of enforcing claims in connection with maintenance of roads. *Parkin Rd. Imp. Dist. v. English*, 199 Ark. 702, 136 S.W.2d 190 (1940).

Special Acts.

This section amends Acts 1923, No. 620 creating St. Francis Improvement District No. 12, by limiting the amount which may be assessed against lands not to exceed one percent on the assessed benefit, but does not repeal such law. *Turley v. Owen*, 188 Ark. 1067, 69 S.W.2d 882 (1934).

Cited: *Leonard v. Arkansas State Hwy. Comm'n*, 186 Ark. 100, 52 S.W.2d 650 (1932).

14-316-206. Maintenance of roads not wholly within the state highway system — Use of funds — Cooperation with State Highway Commission — Annual report.

(a) The commissioners of districts whose roads are not wholly included in the state highway system shall, with the approval of the county court of the county in which the greater portion of the lands of the district are situated, or with the approval of the State Highway Commission, use the funds and revenues of the district for the repair and maintenance and completion of construction of the roads not included in the state highway system, and for other lawful expenses.

(1) The approval of the county court or of the State Highway Commission shall not be necessary in paying out funds in compliance with valid contracts now in existence.

(2) In districts in which the mileage of the roads constructed and included in the state highway system and on which the state has done maintenance work is more than the mileage of the roads constructed and not so included and previously maintained by the district, one-half ($\frac{1}{2}$) of the cash on hand on January 1, 1927, and one-half ($\frac{1}{2}$) of the delinquent taxes due before January 1, 1927, thereafter collected, and one-half ($\frac{1}{2}$) of all other assets, except equipment, shall be used as provided in § 14-316-204. In making the allotment provided for in Acts 1927, No. 11, § 3 [superseded], the commission shall only allot to the district an amount which, when added to such funds, will be sufficient to meet the maturing bonds and interest of the district, with the paying charge on that amount.

(b) The commissioners of such districts shall have the right to call on the State Highway Commission for the advice and services of state highway engineers. If the commission shall deem it inexpedient to furnish the services, the districts may, with the consent of the county court or of the State Highway Commission, employ engineers. The compensation of those engineers shall be fixed by the court or the commission consenting to the employment.

(c) On or before January 10 of each year, the commissioners of such districts shall file with the county court a report, duly sworn to by them, showing the items enumerated in § 14-316-203. All districts which are required by subsection (a)(2) of this section to pay one-half ($\frac{1}{2}$) of their cash, collections, and other assets on maturing bonds and interest of the district shall file a certified report, as provided in § 14-316-203, both with the county court and the State Highway Commission.

(d) The State Highway Commission shall have like authority, and the commissioners, officers, agents, and employees of such districts shall be under a like personal liability, enforceable in like manner, as to that provided in § 14-316-202.

History. Acts 1927, No. 112, § 5;
A.S.A. 1947, § 76-1211.

CASE NOTES

ANALYSIS

Engineers.

Funds.

Engineers.

Where a contract employing the state highway engineer as the engineer of a road improvement district was invalid as against public policy, it was immaterial that the contract stipulated that it should not become effective until he executed a bond and that the bond was not executed until after his successor as state highway engineer had qualified. *Carter v. Bradley County Rd. Imp. Dist. 1 & 2*, 155 Ark. 288, 246 S.W. 9 (1922) (decision under prior law).

Funds.

This section does not require a road improvement district which is wholly outside the state highway system to turn over the funds on hand to the State Highway Commission. *State ex rel. Attorney Gen. v. Little Rock Highland Paving Dist. No. 24*, 199 Ark. 430, 133 S.W.2d 878 (1940).

This section requires an annual approval of the use of funds for maintenance of roads, and such approval, though once granted, would not suffice to authorize payments arising in connection with the improvement of such roads four years subsequently thereto. *Parkin Rd. Imp. Dist. v. English*, 199 Ark. 702, 136 S.W.2d 190 (1940).

14-316-207. Payment of outstanding indebtedness and bonds by funds derived from taxes.

(a) Funds derived from taxes in road improvement districts shall be used by each district to pay its bonds, interest, and other valid and outstanding indebtedness which matured prior to January 1, 1927. The balance, if any, shall be used to pay bonds and interest maturing after January 1, 1927, or for construction, repairs, and maintenance, subject to the restrictions set forth in this subchapter which are intended to govern the expenditure of those funds.

(b) In the event any road district has valid and outstanding indebtedness existing prior to January 1, 1927, or maturing thereafter, not evidenced by bonds or interest coupons and which is not taken over by the state by virtue of Acts 1927, No. 11 [superseded], and the districts have no funds on hand with which to pay the indebtedness, the commissioners of the road district may levy a tax from year to year upon the lands in the district sufficient to pay the valid outstanding indebtedness. Upon payment of the indebtedness as provided in this section, any balance or surplus shall be handled in accordance with the further provisions of this subchapter, provided such districts are authorized to refund any such indebtedness.

History. Acts 1927, No. 112, § 1;
A.S.A. 1947, § 76-1205.

CASE NOTES

ANALYSIS

Purpose.

Source of payment.

Purpose.

The purpose of this section is to require all improvement districts to collect all taxes delinquent prior to January 1, 1927, and for state to pay only such bonds or interest as mature after that date. *Northcutt v. North Ark. Hwy. Imp. Dist.* No. 2, 174 Ark. 315, 295 S.W. 48 (1927).

Source of Payment.

Bond and interest payments made in January and February of 1927 were not to be made from state highway funds. *State ex rel. Attorney Gen. v. Broadaway*, 192 Ark. 634, 93 S.W.2d 1248 (1936).

Cited: *State ex rel. Attorney Gen. v. Little Rock Highland Paving Dist.* No. 24, 199 Ark. 430, 133 S.W.2d 878 (1940); *Parking Rd. Imp. Dist. v. English*, 199 Ark. 702, 136 S.W.2d 190 (1940).

14-316-208. Tax collection prohibited except to pay bonds and interest.

Except taxes delinquent on January 1, 1927, no taxes shall be extended or collected by any district whose roads are wholly included in the state highway system except to pay bonds and interest which became due prior to January 1, 1927, or for other liabilities, unless it becomes necessary to extend and collect taxes to pay bonds and interest maturing after January 1, 1927.

History. Acts 1927, No. 112, § 7;
A.S.A. 1947, § 76-1204.

14-316-209. Use of funds — County road tax vested in county — Repayment of advances.

(a) Road districts shall be permitted to use funds that are on hand to pay valid outstanding debts of the district existing at the date of the passage of this subchapter.

(b) Any part or portion of the three (3) mill county road tax by authority of law vested in or given to any particularly designated rural road improvement district shall be vested in the county in which the tax originates. It shall constitute a part of the public county road funds of that county. In special road improvement districts in counties to which funds have been advanced for use in completing any unfinished road, the improvement of which is authorized by the law creating the district, the board of commissioners of any such improvement district or any receiver in charge thereof is authorized and directed to repay the sums of money so advanced to any person advancing that amount out of any fund on hand which is not necessary for the payment of bonds of the district maturing prior to January 1, 1927, and accrued interest thereon.

History. Acts 1927, No. 112, § 11; A.S.A. 1947, § 76-1212.

Publisher's Notes. In reference to the term "date of passage of this subchapter,"

Acts 1927, No. 112 was signed by the Governor and became effective on March 4, 1927.

SUBCHAPTER 3 — COLLECTION OF DELINQUENT ASSESSMENTS

SECTION.

14-316-301. Construction.

14-316-302. Enforcement proceedings generally.

14-316-303. Notice.

14-316-304. Trial procedures.

14-316-305. Decree — Sale of delinquent lands.

SECTION.

14-316-306. Bidding by district — Conveyance of indefeasible title.

14-316-307. Right of redemption.

Publisher's Notes. As to applicability of certain laws to municipal improvement districts existing prior to July 1, 1952, see §§ 14-90-102 and 14-90-103.

Effective Dates. Acts 1939, No. 56, § 4: Feb. 9, 1939. Emergency clause provided: "Whereas, much confusion now exists as to the proper procedure for the enforcement of collection of delinquent road improvement district and road main-

tenance district taxes and by reason of which a large number of citizens in this State will be materially damaged in their property rights, an emergency is hereby declared because of such act, and this act being necessary for the immediate preservation of the public peace, health and safety, it shall be effective immediately upon its passage and approval."

14-316-301. Construction.

This subchapter shall be liberally construed to give the assessment and tax list the effect of bona fide mortgages for a valuable consideration, and to give a first lien upon the lands and real property as against all persons, firms, or corporations having an interest therein.

History. Acts 1939, No. 56, § 3; A.S.A. 1947, § 76-1209.

14-316-302. Enforcement proceedings generally.

(a) If the assessments of road improvement districts and road maintenance districts as certified by the county tax collector shall not be paid by the time fixed by law for the payment of county taxes, which for the purpose of this subchapter shall be between the first Monday in January and April 10 of each year, a penalty of twenty-five percent (25%) is attached for the delinquency, and the board of commissioners shall institute proceedings in the chancery court for the county to enforce the collection of the delinquency.

(b) The court shall give judgment against the lands and the real property for the amount of the taxes, the penalty of twenty-five percent (25%), and interest on the taxes and penalty from the expiration of the

time for their payment to the collector at the rate of six percent (6%) per annum, and for all costs of the proceeding.

(c) The judgment shall provide for the sale of the delinquent lands for cash by a commissioner of the court after advertisement as set forth in § 14-316-303.

(d) The proceedings and judgment shall be in the nature of a proceeding in rem, and it shall be immaterial that the ownership of the lands is incorrectly alleged in the proceedings. The judgment shall be enforced wholly against the lands and not against any other property of the defendant.

(e) All or any part of the delinquent lands or real property within the district may be included in one (1) suit instituted for the collection of the delinquent taxes, penalty, and costs.

History. Acts 1939, No. 56, § 1; A.S.A. 1947, § 76-1207.

Suit for collection of delinquent taxes, § 14-86-1106.

Cross References. Remission of delinquent penalties in excess of 10 percent, § 14-86-1002.

14-316-303. Notice.

(a) For two (2) consecutive weeks before judgment is entered for the sale of the lands, weekly notice of the pendency of the suit shall be given by publication in some newspaper in the county having a general circulation therein.

(b) Notice may be in the following form:

"NOTICE"

(Name of district vs. delinquent lands in the district)

"All persons, firms, or corporations having or claiming any interest in any of the following described lands or real property are notified that an action is pending in the Chancery Court of County, Arkansas, to enforce the collection of certain road improvement and road maintenance taxes on the following list of lands and real property, each supposed owner's name having been set opposite his, her, or its property, together with the total amount severally due from each, to wit: (then shall follow a list of the supposed owners with a description of the lands and the amounts due thereon, respectively, as aforesaid).

"All persons, firms, or corporations interested in the property are notified that they are required by law to appear within four (4) weeks and make defense to the suits or same will be taken for confessed and final judgment shall be entered directing the sale of the lands for the purpose of collecting the taxes, together with all the interest, penalty, and costs allowed by law.

.....
Clerk of Chancery Court."

(c) The complaint above referred to need not allege minor details of organization of the district or the manner of making or levying the

assessments or benefits, but it may allege generally the organization of the district and that the taxes sought to be foreclosed are past due and unpaid.

History. Acts 1939, No. 56, § 1; A.S.A. 1947, § 76-1207.

14-316-304. Trial procedures.

(a) Suits for delinquent assessments shall be conducted in the name of the district and in accordance with the practice and procedure of the chancery courts of this state, except as herein otherwise provided, but neither attorneys ad litem, guardians ad litem, nor any other provisions of § 16-65-403 shall be required, and the suits may be disposed of on oral testimony as in ordinary suits at law.

(b) However, no informality or irregularity in holding any meeting provided for in this subchapter, or in any description, valuation, or assessment of the property, or in the name of the owner, number of acres, or manner of assessment, shall be a valid defense to the action.

History. Acts 1939, No. 56, § 3; A.S.A. 1947, § 76-1209.

14-316-305. Decree — Sale of delinquent lands.

(a) At the first regular or adjourned term of the chancery court after the notice has been published for three (3) consecutive weeks and not earlier than five (5) days after the last insertion of the notice, the suit shall stand for trial unless a continuance is granted to a delinquent for some good cause shown, in the discretion of the court. The continuance shall not affect the court's duty to proceed with the delinquents as to whom no continuance was granted.

(b) In all cases where the notice has been published as provided in subsection (a) of this section and no answer has been filed, or where answer is filed and the cause decided for the plaintiff, the chancery court by its decree shall grant the relief prayed for in the complaint, shall tax as part of the cost a reasonable attorney's fee for the plaintiff, and shall direct the commissioner to sell the land described in the complaint at the front door of the county courthouse to the highest and best bidder for cash in hand, after having first advertised the sale, such advertisement to include all lands embraced in the decree, for two (2) weeks consecutively in some newspaper published in the county.

(c) If all lands are not sold on the day advertised, the sale shall be continued from day to day until completed.

(d) The commissioner shall by proper deed convey title to the purchaser as against all others whomsoever, saving to infants and insane persons having no guardians and curators, the rights they now have by law to appear and except to the proceedings within twelve (12) months after their disabilities have ended.

(e) The commissioner conducting the sale shall be allowed a reasonable fee, to be fixed by the chancery court, which shall be taxed as costs in the case.

(f) The commissioner shall keep an accurate list of all lands sold and shall account to the board of commissioners for all money derived from the sale of delinquent lands.

History. Acts 1939, No. 56, § 2; A.S.A. 1947, § 76-1208.

14-316-306. Bidding by district — Conveyance of indefeasible title.

In any case where property is offered for sale by the commissioner as provided in § 14-316-305 and the sum of the taxes, together with the interest, costs, and penalty, is not bid for the property, the commissioner shall bid therefor, in the name of the district, the whole amount due as aforesaid, and shall execute his deed therefor, as in other cases under this subchapter, conveying the property to the district. All deeds, when executed in conformity with the provisions of this subchapter and recorded, shall be as evidence in all cases showing an indefeasible title in the purchaser, unassailable either at law or in equity.

History. Acts 1939, No. 56, § 4; A.S.A. 1947, § 76-1210.

14-316-307. Right of redemption.

(a) At any time within three (3) years after the rendition of the final decree by the chancery court provided for in § 14-316-305, the owner of the property may file his petition in the court alleging the payment of taxes for the year for which the lands were sold. Upon the establishment of that fact, the court shall vacate and set aside the decree as to that particular property.

(b) Any owner of real property shall have the same right to redeem any and all property sold at the sale within one (1) year thereafter.

History. Acts 1939, No. 56, § 4; A.S.A. 1947, § 76-1210.

Cross References. Redemption, § 14-86-1501 et seq.

CHAPTER 317

RURAL ROAD IMPROVEMENT DISTRICTS

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Cross References. Districts with roads not wholly within state highway system, § 14-316-205.

Tort liability immunity, § 21-9-301 et seq.

Effective Dates. Acts 1955, No. 367, § 27: approved Mar. 24, 1955. Emergency clause provided: "It is hereby ascertained and declared that many areas in the counties of this State that do not lie adjacent to cities with a population of five thousand or more, as said adjacency is defined by Act 41 [§§ 20-701—20-727] of the 1941 Acts of the General Assembly of the State of Arkansas, are unable to provide themselves with adequately improved roads, highways and streets; that many of the counties of this state are financially unable to properly improve the roads, highways and streets in these areas; that the citizens residing and owning land in these areas are in dire need of improved roads, highways and streets; and that the improvement of said roads, highways and

streets is necessary to the health, safety, and welfare of the citizens residing in said areas; and for these reasons it is hereby ascertained and declared that an emergency exists; and this Act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from and after its passage."

Acts 1971, No. 336, § 4: Mar. 22, 1971. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that existing law pertaining to the formation of rural road and street improvement districts for territory lying in more than one county should be clarified in order that needed districts may be properly and expeditiously established; that it is essential to the continued growth and welfare of this State and her inhabitants that the provisions of this Act be immediately available to interested parties; and that the immediate effectiveness of this Act is the only means by

which these public purposes can be accomplished. Therefore an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not

feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

CASE NOTES

Assessments Based on Benefits.

This chapter requires that assessments be made in relation to benefits derived, and makes no mention of the ability of the beneficiaries to pay. Where the record shows that the landowners would receive all the benefits and enhancement of the

values of their properties as reflected by the report of the district assessor, there is no merit in a contention that the assessments were confiscatory. *Borden v. Armstrong*, 240 Ark. 1050, 403 S.W.2d 731 (1966).

14-317-101. Definition.

As used in this chapter, unless the context otherwise requires, "lands" or "real property" shall be construed to embrace all property subject to taxation for the purposes of this chapter.

History. Acts 1955, No. 367, § 4;
A.S.A. 1947, § 20-1204.

14-317-102. Violations.

It shall not be lawful for the board of the district, or any officer, member, or agent thereof, to pledge or deposit any bond or coupon issued under the provisions of this chapter as security for payment of any borrowed money or any debt or obligation of the board, or any person, firm, or corporation whatever, nor shall it be lawful for the board of the district, or any officer, member, or agent thereof, to appropriate or use any money arising from the sale of any bond or bonds authorized to be issued under this chapter to any use or purpose whatever other than is herein specified and expressly directed. Any officer, member, or agent of the board of the district who shall violate any of the provisions of this section shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for not less than one (1) year nor more than five (5) years.

History. Acts 1955, No. 367, § 19;
A.S.A. 1947, § 20-1219.

14-317-103. Petition for district formation — In general.

(a)(1) Whenever a two-thirds ($\frac{2}{3}$) majority in value, acreage, or number of landowners within a proposed road improvement district shall petition the county court to establish a road improvement district to embrace a certain region which it is intended shall be embraced within the boundaries of the district, it shall be the duty of the county court:

(A) To lay off into a road improvement district the territory described in the petition for the purpose of grading, draining, graveling, paving, curbing, and guttering roads, highways, and streets as set forth in the petition; and

(B) To name as commissioners of the district the persons whose names appear in the petition, provided they are property owners in the district, if the petition contains the names and if not, three (3) property owners of the district of integrity and good business ability.

(2) All or portions of incorporated towns or cities may be included in the districts, provided that the area of the district located within the incorporated towns or cities shall be less than a majority of the area of the entire district and provided further that no incorporated town or city or portion thereof shall be included in the district unless it shall be found that a two-thirds ($\frac{2}{3}$) majority in value of the owners of real property within the affected area of the incorporated town or city, irrespective of a majority elsewhere in the district, have petitioned for formation of the district.

(b)(1) If land in more than one (1) county is embraced in the proposed district, the petition shall be addressed to the circuit court for the county in which the largest portion of the lands lie and all proceedings shall be had in that circuit court. In cases where the district contains lands in more than one (1) county, the words "county court" or "county judge" as used in this chapter shall be construed to mean "circuit court" or "circuit judge," and the words "county clerk" to mean "circuit clerk," unless the context clearly indicates to the contrary. All notices in that event shall be published in newspapers published and having a bona fide circulation in each county in which the district embraces land.

(2) If land in more than one (1) county is embraced in the proposed district, the commissioners of the district shall be selected so as to name at least one (1) property holder in the affected territory of each county in which the district embraces land. However, if the district embraces land in more than three (3) counties, the commissioners of the district shall be selected so that not more than one (1) commissioner shall be a property holder in the territory of any county in which the district embraces land.

History. Acts 1955, No. 367, § 1; 1963, No. 534, § 1; 1971, No. 336, § 1; A.S.A. 1947, § 20-1201.

14-317-104. Notice of petition.

(a) Upon the filing of the petition, it shall be the duty of the county clerk to give notice of the filing thereof, describing the territory to be affected and calling upon all persons who wish to be heard upon the question of the establishment of the district, to appear before the county court on a day to be fixed in the notice.

(b) The notice shall be published once a week for two (2) weeks in some newspaper published and having a bona fide circulation in the district where the lands affected are situated.

(c) This notice may be in the following form:

"Notice is given that a petition has been filed praying for the formation of a road improvement district for the purpose of The petition is on file at the office of the County Clerk of County, where it is open to inspection. All persons desiring to be heard on the question of the formation of the district will be heard by the county court on the . . . day of, 19 The following lands are affected: (Here give description of lands affected; the same may be described by using the largest subdivision possible).

County Clerk."

History. Acts 1955, No. 367, § 2; 1963, No. 534, § 2; A.S.A. 1947, § 20-1202.

14-317-105. Circulation of identical petitions.

Any number of identical petitions may be circulated, and identical petitions with additional names may be filed at any time until the county court acts.

History. Acts 1955, No. 367, § 2; 1963, No. 534, § 2; A.S.A. 1947, § 20-1202.

14-317-106. Hearing on petition — Appeal.

(a) On the day named in the notice, it shall be the duty of the county court to meet and to hear the petition and to ascertain whether those signing the petition constitute a two-thirds ($\frac{2}{3}$) majority in value, acreage, or number of landowners within the proposed road improvement district.

(1) If the county court determines that a two-thirds ($\frac{2}{3}$) majority in value, acreage, or number of landowners within the proposed road improvement district have petitioned for the improvement, it shall enter its judgment laying off the district as defined in the petition and

appointing the commissioners named in the petition, if commissioners are named therein and are property holders in the district.

(2) If it fails to find that a two-thirds ($\frac{2}{3}$) majority in either value, acreage, or number of landowners within the proposed road improvement district have signed the petition, it shall enter its order denying the petition.

(b) If any part of the proposed district shall be located within the corporate limits of an incorporated town or city, the county court shall make a separate finding on the question of two-thirds ($\frac{2}{3}$) majority in that incorporated town or city.

(1) If the court finds that a two-thirds ($\frac{2}{3}$) majority in value in the portion of each incorporated town or city that is included in the proposed district, as well as two-thirds ($\frac{2}{3}$) majority in value, acreage, or number of landowners of rural lands affected, have petitioned for the improvement, it shall enter its judgment laying off the district as defined in the petition and appoint the commissioners named in the petition, if commissioners are named therein and are property holders in the district.

(2) If it fails to find that a two-thirds ($\frac{2}{3}$) majority in value of the area affected by the proposed district in any incorporated town or city affected or a two-thirds ($\frac{2}{3}$) majority in either value, acreage, or number of landowners of the lands affected outside of an incorporated town or city has signed the petition, it shall enter its order denying the petition.

(c) Any petitioner or any opponent of the petitioner may appeal from the judgment of the county court creating or refusing to create the district, but the appeal must be taken and perfected within thirty (30) days. If no appeal is taken within that time, the judgment creating the district shall be final and conclusive upon all persons.

(d) The petition shall state the specific purposes for which the district is to be formed. The judgment establishing the district shall give it a name which shall be descriptive of the purpose. The district shall also receive a number to prevent its being confused with other districts for similar purposes.

History. Acts 1955, No. 367, § 2; 1963, No. 534, § 2; A.S.A. 1947, § 20-1202.

14-317-107. District as body corporate.

Each district shall be a body corporate with power to sue and to be sued, and it shall have a corporate seal.

History. Acts 1955, No. 367, § 3; A.S.A. 1947, § 20-1203.

14-317-108. Commissioners' oath.

(a) Within thirty (30) days after their appointment, the commissioners shall take and file their oath of office with the county clerk. In their oath they shall swear that they will support the Constitution of the United States and the Constitution of the State of Arkansas, that they will discharge faithfully their duties as commissioners, and that they will not be interested, directly or indirectly, in any contract let by the board.

(b) Any commissioner failing to file such oath within the thirty-day period shall be deemed to have declined the office, and the county court shall appoint some property holder as his successor, who shall qualify in like manner within a like time.

History. Acts 1955, No. 367, § 3;
A.S.A. 1947, § 20-1203.

14-317-109. Board organization — Vacancy.

(a) The board of commissioners shall organize by electing one of its members chairman, and it shall select a secretary.

(b) It may also employ such agents, servants, engineers, and attorneys as it deems best and fix their compensation and the compensation of the secretary.

(c) In case of a vacancy on the board of commissioners, after the commissioners have organized, the remaining commissioners shall select the successor, who shall be a property holder in the district. The person so selected shall qualify by taking the oath of office as prescribed for the original commissioners.

History. Acts 1955, No. 367, § 3;
A.S.A. 1947, § 20-1203.

14-317-110. Liability of board members.

No member of the board of improvement shall be liable for any damages unless it shall be made to appear that he has acted with a corrupt and malicious intent.

History. Acts 1955, No. 367, § 16;
A.S.A. 1947, § 20-1216.

14-317-111. Depository.

The board shall select some solvent bank or trust company as the depository of its funds, exacting of the depository a bond in an amount equal to the amount of money likely to come into its hands.

History. Acts 1955, No. 367, § 3;
A.S.A. 1947, § 20-1203.

14-317-112. Eminent domain.

All districts organized under this chapter shall have the right of eminent domain in order that they may carry out the purpose of their creation. This right shall be exercised in the same manner as in the case of railroads, telegraph, and telephone companies, but without the necessity of making a deposit of money before entering into possession of the property condemned.

History. Acts 1955, No. 367, § 23;
A.S.A. 1947, § 20-1223.

CASE NOTES

ANALYSIS

In general.
Reports not required.

In General.

A road improvement district has the power of eminent domain under the provisions of this section. *Borden v. Armstrong*, 240 Ark. 1050, 403 S.W.2d 731 (1966).

Reports Not Required.

This section does not require that engineering reports have to be filed by the commission with the county clerk, nor is it necessary to file a report or give information to the landowners as to the nature and type of bonds to be sold by the district. *Borden v. Armstrong*, 240 Ark. 1050, 403 S.W.2d 731 (1960).

14-317-113. Sale of acquired lands.

Any land that may be acquired by any district organized under this chapter may be sold by the commissioners for the price and on the terms they deem best.

History. Acts 1955, No. 367, § 26;
A.S.A. 1947, § 20-1225.

14-317-114. Bonds generally.

(a) All bonds issued by the commissioners under the terms of this chapter shall be secured by a lien on all lands in the district. The board of commissioners shall see to it that a tax is levied annually and collected under the provisions of this chapter, so long as may be necessary to pay any bond issued or obligation contracted under its authority, and the making of the assessment or levy and collection may be enforced by mandamus.

(b) If any bond or interest coupon on any bond issued by the board is not paid within thirty (30) days after its maturity, it shall be the duty of any court of competent jurisdiction, on application of any holder of the bond or interest coupon so overdue, to appoint a receiver to collect the taxes aforesaid and an assessor to reassess the benefits, if necessary. The proceeds of the taxes and collections shall be applied after

payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the board which are then due and payable. The receiver may be directed by suit to foreclose the lien of the taxes on the lands, and the suits so brought by the receiver shall be conducted in all matters as suits by the board as hereinbefore provided and with like effect, and the decree and deeds therein shall have the same presumption in their favor. However, when all the sums have been paid, the receiver shall be discharged and the affairs of the district conducted by the board of commissioners as hereinbefore provided.

History. Acts 1955, No. 367, § 18;
A.S.A. 1947, § 20-1218.

14-317-115. Plans for improvement — Assessor.

(a) Immediately after their qualification, the commissioners shall form plans for the improvement. To that end they may employ such engineers, attorneys, and other assistants as they find necessary and shall file a copy thereof with the county clerk.

(b)(1) They shall thereupon appoint an assessor to assess the benefits which will accrue to the real property within the district from the making of the improvement.

(2) The assessor shall take an oath that he will well and truly assess all benefits that will accrue to the landowners of the district by the making of the proposed improvement.

(3) He shall thereupon proceed to assess the lands within the district and shall inscribe in a book each tract of land. He shall place in one (1) column his valuation of each tract or parcel of land before the improvement is made, which column may be marked "Assessed Value of Land before Improvements Are Made," and in another column he shall place what he thinks will be the value of each tract or parcel of land after the improvement is made, which column may be marked "Assessed Value of Land after Improvements Are Made." If the "Assessed Value of Land after Improvements Are Made" is greater than the "Assessed Value of Land before the Improvements Are Made," as assessed by the assessor for the district, then the difference between the two (2) shall be the assessed benefits that will accrue to each tract by reason of the improvement, but if the "Assessed Value of Land after Improvements Are Made" is less than the "Assessed Value of Land before Improvements Are Made," as assessed by the assessor for the district, then the difference between the two (2) shall be the assessed damages that will accrue to the particular parcel or tract of land by reason of the improvement. The assessor shall enter such assessment of benefits or damages opposite the description of each piece of property in appropriate columns, one (1) of which may be marked "Assessed Benefits," and the other may be marked "Assessed Damages," and in another column the assessor shall show the estimate of the probable cost to the landowner, which may be marked "Estimated Cost."

(4) His assessment shall embrace all the lands and improvements on real estate that will be benefited by the making of the improvement.

(5) The assessor shall place opposite each tract the name of the supposed owner, as shown by the last county assessment, but a mistake in the name shall not vitiate the assessment, and the assessor shall correct errors which occur in the county assessment list.

(6) The assessor shall also assess all damages that will accrue to any landowner by reason of the proposed improvement, including all injury to lands taken or damaged.

(7) Where he returns no such damages to any tract of land, it shall be deemed a finding by him that no damages will be sustained.

(8) When the board shall make the levy of taxes, it shall be the duty of the assessor to extend the amount levied and set that amount opposite each benefit assessed in a column marked "Annual Collection."

(9) The assessor shall hold his office at the pleasure of the board, which can fill any vacancy in the position of assessor.

History. Acts 1955, No. 367, §§ 4, 9;
A.S.A. 1947, §§ 20-1204, 20-1209.

14-317-116. County clerk — Collector.

(a) It shall be the duty of the county clerk of the county to extend taxes annually upon the tax books of the county until the levy is exhausted, and for his services he shall receive a commission of one and one-half percent ($1\frac{1}{2}\%$) of the amount so extended.

(b) It shall then be the duty of the collector to collect each year the taxes extended upon the books along with the other taxes until the entire levy is exhausted. For his services in making the collections, the collector shall receive a commission of one and one-half percent ($1\frac{1}{2}\%$), and the taxes shall be paid by the collector to the depository of the district at the same time he pays over the county funds.

(c) In counties operating under the unit tax ledger system, the tax collector shall receive a commission of one and one-half percent ($1\frac{1}{2}\%$) for extending the taxes and a commission of an additional one and one-half percent ($1\frac{1}{2}\%$) for collecting the taxes. County clerks and tax collectors are authorized to employ additional deputies to do the additional work imposed by the terms of this chapter.

(d) No property owner shall be required to pay the improvement taxes herein provided as a prerequisite to paying his general taxes.

History. Acts 1955, No. 367, § 9;
A.S.A. 1947, § 20-1209.

14-317-117. Alteration of plans.

(a) The commissioners may at any time alter the plans and specifications.

(b) The changed plans, with the accompanying specifications, shall be filed with the county court. Notice of filing shall be given by publication for two (2) weeks in some newspaper issued and having a bona fide circulation in the county.

(c) If, by reason of the change of plans, the board of commissioners deems that the assessment of benefits has become inequitable, it shall direct the assessor to make a reassessment.

(d) If any property owner deems that by reason of the change of plans his assessment has become inequitable, he may, within two (2) weeks after the last publication of notice, petition the board to order a reassessment. The decision of the board upon his petition shall be final unless an appeal is taken within ten (10) days to the county court.

(e) In case of reassessment, the reassessment shall be filed, advertised, and equalized as provided for in the original assessment.

(f) Wherever the words "two-thirds ($\frac{2}{3}$) majority in value" are used herein, it shall be construed to mean a two-thirds ($\frac{2}{3}$) majority in assessed value as shown by the latest county assessment records for general taxes.

History. Acts 1955, No. 367, § 22;
A.S.A. 1947, § 20-1222.

14-317-118. Signatures prerequisite to levy — Five year freeze on assessment increase.

(a) Road and street improvement districts formed after July 4, 1983, under the provisions of this chapter shall be subject to the provisions of this section in addition to other provisions of this chapter and all other applicable laws.

(b) When the initial assessment of benefits by the districts has been determined, the petition for formation of the districts shall once again be reviewed by the authority initially reviewing the petition, and, if upon review, it does not appear that persons who would be liable for at least fifty-one percent (51%) of the initial assessed benefits have signed the petition, then the assessment shall not be levied until additional signatures are obtained on the petition which would represent the approval of persons who would be liable for at least fifty-one percent (51%) of the assessments.

(c) Furthermore, the first assessment of benefits by the districts shall not be increased for a period of five (5) years subsequent to the first levy.

(d) Thereafter, the assessment of benefits shall be as otherwise provided by law.

History. Acts 1983, No. 428, § 1;
A.S.A. 1947, § 20-1204.1.

14-317-119. Assessment order — Lien — Remedy.

(a) The board of commissioners of the district shall at the same time that the assessment of benefits is equalized, or at any time thereafter, enter upon its records an order, which shall have all the force of a judgment, providing that there shall be assessed upon the real property of the district a tax sufficient to pay the estimated cost of the improvement with ten percent (10%) added for unforeseen contingencies. This tax is to be paid by the real property in the district in the proportion to the amount of the assessment of benefits thereon and is to be paid in annual installments, payable not to exceed ten percent (10%) for any one year, as provided in the order.

(b) The tax so levied shall be a lien upon all the real property in the district from the time the tax is levied and shall be entitled to preference over all demands, executions, encumbrances, or liens whensoever created, and shall continue until the assessment, with any penalty costs that may accrue thereon, shall have been paid.

(c) The remedy against the levy of taxes shall be by suit in chancery, and the suit must be brought within thirty (30) days from the time that the levy was made, and on the appeal the presumption shall be in favor of the legality of the tax.

History. Acts 1955, No. 367, § 7;
A.S.A. 1947, § 20-1207.

14-317-120. Filing assessments — Notice — Hearing.

(a) The assessment shall be filed with the county clerk of the county where the land lies.

(b) The secretary of the board shall thereupon give notice of its filing by publication one (1) time a week for two (2) weeks in a newspaper publishing and having a bona fide circulation in the district.

(c) This notice may be in the following form:

"Notice is hereby given that the assessment of benefits and damages of District Number has been filed in the office of the County Clerk of County, and where it is open to inspection. All persons wishing to be heard on said assessment will be heard by the commissioners and the assessor of the district between the hours of 10 a. m. and 4 p. m. at, in the city of, Arkansas, on the . . . day of, 19

Secretary."

(d) On the day named in the notice, it shall be the duty of the commissioners and assessor to meet together at the place named as a board of equalization and to hear all complaints against the assessment and

to equalize and adjust the assessment. Their determination shall be final unless suit is brought in the chancery court within thirty (30) days to review it.

History. Acts 1955, No. 367, § 5; 1963, No. 534, § 3; A.S.A. 1947, § 20-1205.

14-317-121. Interest on assessment.

The assessment of the benefits shall bear interest at the rate of six percent (6%) per annum from the time it is equalized, but the interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest, or the interest may be first collected.

History. Acts 1955, No. 367, § 8; A.S.A. 1947, § 20-1208.

14-317-122. Reassessment.

(a) The commissioners, not more often than once a year, may require the assessor to reassess the benefits in the district. In the event the district shall have incurred any indebtedness or issued bonds, the total amount of assessed benefits shall never be diminished.

(b) The reassessment shall be made, advertised, and equalized in the same manner as provided herein for making the original assessment.

History. Acts 1955, No. 367, § 6; A.S.A. 1947, § 20-1206.

14-317-123. Additional levies for payment of bonds.

If the tax first levied shall prove insufficient to pay the bonds, both the principal and interest, issued by the board of commissioners on account of the improvement, as hereinbefore provided, as the improvement shall become due and payable, they shall from time to time make further levies upon the property previously assessed for sums sufficient to complete the improvement and to pay the bonds and interest, which shall be extended and collected in the same manner as the first levy. However, the total levy shall in no case exceed the value of the benefits assessed on the property with interest, and the performance of the duties may be enforced by mandamus at the instance of any person or board interested.

History. Acts 1955, No. 367, § 10; A.S.A. 1947, § 20-1210.

14-317-124. Payment of levies — Delinquency.

All taxes levied under the terms of this chapter shall be payable in installments at the same time as other state, county, and city taxes are now paid. If any taxes levied by the board in pursuance to this chapter are not paid at maturity, the collector shall not embrace such taxes in the taxes for which he shall sell the lands, but he shall report the delinquencies to the board of commissioners of the district, who shall add to the amount of the tax a penalty of twenty-five percent (25%). The board of commissioners shall enforce the collection by chancery proceedings in the chancery court of the county, in the manner provided by §§ 14-121-426 — 14-121-432. But the owner of the property sold for taxes thereunder shall have the right to redeem it at any time within two (2) years from the time when his lands have been stricken off by the commissioner making the sale.

History. Acts 1955, No. 367, § 11;
A.S.A. 1947, § 20-1211.

14-317-125. Warrants.

(a) The depository shall pay out no money save upon the order of the board and upon a warrant signed by at least two (2) of the commissioners.

(b) Every warrant shall state upon its face to whom it is issued and the amount and the purpose for which it is issued.

(c) All warrants shall be dated and shall be numbered consecutively, in a record to be kept by the board of the number and amount of each. No warrant shall be paid unless there are in the treasury funds enough to pay all outstanding warrants bearing a lower number.

(d) No warrants shall be increased by reason of any depreciation in the market value thereof, nor shall any contract or warrant be made payable or paid in anything but currency.

History. Acts 1955, No. 367, § 12;
A.S.A. 1947, § 20-1212.

14-317-126. Priority of actions — Appeals.

(a) All cases involving the validity of rural road and street improvement districts or the assessment of benefits and all suits to foreclose the lien or taxes shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment.

(b) All appeals therefrom must be taken and perfected within thirty (30) days.

History. Acts 1955, No. 367, § 20;
A.S.A. 1947, § 20-1220.

14-317-127. Powers of board.

(a) The board of commissioners may appoint all necessary agents for carrying on the work and may fix their pay and shall pay a reasonable fee for legal services in organizing the district and for circulating petitions.

(b) The board may sell all unnecessary material and implements that may be on hand and which may not be necessary for the completion of the improvement under way, or which may have been completed, and may in general make all contracts in the prosecution of the work as may best subserve the public interest.

History. Acts 1955, No. 367, § 13;
A.S.A. 1947, § 20-1213.

14-317-128. Negotiable notes or bonds — Mortgages.

(a) In order to meet preliminary expenses and to do the work, the board may issue the negotiable notes or bonds of the district signed by the members of the board and bearing a rate or rates of interest approved by the board and may pledge and mortgage all assessments for the payment thereof.

(b) It may also issue to the contractors who do the work negotiable evidences of debt-bearing interest at a rate or rates provided in the resolution authorizing their issuance and secure the negotiable evidences of debt in the same manner as set out in subsection (a) of this section.

(c) No bonds issued under the terms of this chapter shall run for more than thirty (30) years, and all issues of bonds may be divided so that a portion thereof may mature each year as the assessments are collected or they may all be made payable at the same time, with proper provision for a sinking fund.

(d) The bonds shall not be sold for less than par without the unanimous vote of the board.

History. Acts 1955, No. 367, § 15;
1981, No. 425, § 24; A.S.A. 1947,
§ 20-1215.

14-317-129. Contractors' bonds.

All contractors shall be required to give bond for the faithful performance of the contracts awarded them, with good and sufficient sureties, in an amount to be fixed by the board. The board shall not remit or excuse the penalty or forfeiture of the bond or the breaches thereof.

History. Acts 1955, No. 367, § 13;
A.S.A. 1947, § 20-1213.

14-317-130. Estimate of work completed — Payment of contractors.

It shall be the duty of the board to have the amount of work done by any contractor estimated from time to time, as may be desirable by the engineer selected by the board. The board shall draw its warrants in favor of the contractor for not more than ninety percent (90%) of the amount of work so reported, reserving the remainder until it has been ascertained that the work is completed according to contract and is free from liens.

History. Acts 1955, No. 367, § 14;
A.S.A. 1947, § 20-1214.

14-317-131. Preliminary expenses after failure to make improvement.

In case for any reason the improvement contemplated by any district organized under this chapter is not made, the preliminary expense shall be a first lien upon all the land in the district and shall be paid by a levy of a tax thereon upon the assessed value for county and state taxation, which levy shall be made by the chancery court of the county and shall be collected by a receiver to be appointed by the court.

History. Acts 1955, No. 367, § 21;
A.S.A. 1947, § 20-1221.

14-317-132. District's continued existence — Levies for repair.

(a) The district shall not cease to exist upon the completion of the improvement, but the district shall continue to exist for the purpose of preserving it and keeping it in repair.

(b) To this end, the commissioners may from time to time make such additional levies based upon the assessment of benefits as may be necessary for that purpose, and the amount of the total levies shall not exceed the assessed benefits and interest thereon.

History. Acts 1955, No. 367, § 17;
A.S.A. 1947, § 20-1217.

14-317-133. Disposition of funds.

(a) The county court is authorized:

(1) To turn over to any road or street improvement district organized under this chapter such proportion of the road tax, as may be just and equitable, or any portion of the automobile or gasoline tax turnback fund; and

(2) To contribute the funds in money or scrip to the expense of the improvement from the general revenue of the county as it may deem appropriate.

(b) Any such district is authorized to receive any part of the funds that may be set aside by the Government of the United States for the improvement of public roads, and any that may hereafter be set aside by the government of this state for aid in the improvement of public roads.

(c) The commissioners of the district and the Arkansas State Highway and Transportation Department are authorized and directed to take such action as may be necessary to secure any of the federal funds for the districts as an improvement of a part of the public roads of the state in which this state has an interest.

History. Acts 1955, No. 367, § 25;
A.S.A. 1947, § 20-1224.

CHAPTER 318

IMPROVEMENT DISTRICTS FOR ACQUIRING RIGHTS-OF-WAY

SECTION.

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SECTION.

- 14-318-117. Interest on assessment.
- 14-318-118. Reassessment of benefits.
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- 14-318-125. Misuse of bonds or money arising from sale of bonds — Penalties.
- 14-318-126. Priority of actions — Appeals.

Effective Dates. Acts 1938 (Ex. Sess.), No. 23, § 22: approved Apr. 1, 1938. Emergency clause provided: "It is ascertained and hereby declared that the immediate operation of this act is necessary

for the safety of persons using the highways of this State, and it is therefore declared that an emergency exists, and that this act shall take effect and be in force immediately upon its passage."

14-318-101. Definition.

As used in this chapter, unless the context otherwise requires, "adjacent lands" mean all lands within ten (10) miles of any city or incorporated town.

History. Acts 1938 (Ex. Sess.), No. 23,
§ 19; A.S.A. 1947, § 76-1420.

14-318-102. Enforcement.

The commissioners and all other officers having duties to perform under this chapter may be required to perform their duties either by mandamus or by mandatory injunction in a suit brought by any interested party.

History. Acts 1938 (Ex. Sess.), No. 23,
§ 15; A.S.A. 1947, § 76-1416.

RESEARCH REFERENCES

Ark. L. Rev. Mandamus to Review Administrative Action in Arkansas, 11 Ark. L. Rev. 352.

14-318-103. Petition by landowners.

When a petition, signed by ten (10) owners of real property within the limits of a district proposed to be organized for the purpose of procuring a right-of-way for any highway, viaduct, or underpass which the Government of the United States, or any of its agencies, proposes to construct and for the purpose of paying the damages caused by such improvement, the petition describing the property which will be benefited by the making of the improvement, is presented to the county court or county judge, it shall be the duty of the county court to meet immediately and to enter an order upon its record, reciting the filing of the petition and fixing a day for hearing of those who favor the formation of the district and those opposed thereto.

History. Acts 1938 (Ex. Sess.), No. 23,
§ 1; A.S.A. 1947, § 76-1401.

14-318-104. Notice of petition.

(a) It shall be the duty of the county clerk to give notice of the filing of the petition describing the territory to be affected and calling upon all persons who wish to be heard upon the question of the establishment of the district to appear before the county court on a day to be fixed in the notice.

(b) The notice shall be published once a week for two (2) weeks in some newspaper published and having a bona fide circulation in the county where the lands affected are situated. The last publication of notice is to be at least seven (7) days before the day fixed for the hearing.

(c) This notice may be in the following form:

"Notice is hereby given that a petition has been filed praying for the formation of an improvement district for the purpose of The petition is on file at the office of the County Clerk of County, where it is open to inspection. All persons desiring to be heard on the question of the formation of the district will be heard by the county court on the day of, 19. The following lands are affected: (Here give description of lands affected. Lands may be described by using the largest subdivisions possible).

.
County Clerk."

History. Acts 1938 (Ex. Sess.), No. 23,
§ 2; A.S.A. 1947, § 76-1403.

14-318-105. Hearing on petition — Appeal.

(a) On the day named in the notice, it shall be the duty of the county court to meet and to hear all persons who favor the formation of the district or oppose its formation.

(1) If the court finds that the organization of the district would be to the benefit of the territory described in the petition and to the public interest, it shall enter its judgment creating the district.

(2) If it finds that the organization of the district would not be beneficial to the real property in the district or to the public interest, it shall enter its judgment refusing to establish the district.

(b) The district may embrace a portion of any city or incorporated town that would be specially benefited by the making of the improvement, but the territory outside of the town and within the district must exceed in area that portion which is within the city or incorporated town.

(c) Any petitioner or any opponent of the petition may appeal from the judgment of the county court creating or refusing to create the district; but the appeal must be taken within thirty (30) days. If no appeal is taken within that time, the judgment creating the district shall be final and conclusive upon all persons.

(d) Any judgment creating a district shall appoint three (3) commissioners, who shall be owners of real property within the district. The judgment shall give a name to the district which shall be descriptive of its purpose, and it shall also receive a number to prevent its being confused with other districts for similar purposes.

History. Acts 1938 (Ex. Sess.), No. 23, § 2; A.S.A. 1947, § 76-1403.

14-318-106. District as body corporate.

Each district shall be a body corporate with power to sue and to be sued, and it shall have a corporate seal.

History. Acts 1938 (Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 76-1404.

14-318-107. Commissioners' oath.

Within thirty (30) days after their appointment, the commissioners shall take and file their oath of office with the county clerk. In this oath they shall swear that they will support the Constitution of the United States and the Constitution of the State of Arkansas, that they will discharge faithfully their duties as commissioners, and that they will not be interested, directly or indirectly, in any contract let by the board. Any commissioner failing to file such oath within this period shall be deemed to have declined the office. The county court shall appoint some property holder as his successor, who shall qualify in like manner within a like time.

History. Acts 1938 (Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 76-1404.

14-318-108. Board organization — Vacancy.

(a) The board shall organize by electing one (1) of its members chairman, and it shall select a secretary. It may also employ such agents, servants, engineers, and attorneys as it deems best and fix their compensation and the compensation of the secretary.

(b) In case of a vacancy on the board of commissioners, after the commissioners have organized, the remaining commissioners shall select the successor, who shall be a property holder in the district. The person so selected shall qualify by taking the oath of office as prescribed for the original commissioners.

History. Acts 1938 (Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 76-1404.

14-318-109. Liability of board members.

No member of the board of improvement shall be liable for any damages unless it shall be made to appear that he had acted with a corrupt and malicious intent.

History. Acts 1938 (Ex. Sess.), No. 23, § 13; A.S.A. 1947, § 76-1414.

14-318-110. Depository.

The board shall also select some solvent bank or trust company as the depository of its funds, exacting of the depository a bond in an amount equal to the amount of money likely to come into its hands.

History. Acts 1938 (Ex. Sess.), No. 23, § 3; A.S.A. 1947, § 76-1404.

14-318-111. Eminent domain.

All districts organized under this chapter shall have the right of eminent domain in order that they may carry out the purposes of their creation. This right shall be exercised in the same manner as in the case of railroads, telegraph, and telephone companies, but shall be without the necessity of making a deposit of money before entering into possession of the property condemned.

History. Acts 1938 (Ex. Sess.), No. 23, § 20; A.S.A. 1947, § 76-1421. by railroad, telegraph, and telephone companies, § 18-15-1201 et seq.

Cross References. Eminent domain

14-318-112. Procurement and filing of plans for rights-of-way.

Immediately after their qualifications, the commissioners shall procure from the Government of the United States, or any of its agencies, the plans for the improvement. They shall file the plans with the county clerk along with a statement of the obligation which the district will assume for the procurement of the necessary rights-of-way, and for paying all damages that may be caused by the making of the improvement.

History. Acts 1938 (Ex. Sess.), No. 23, § 4; A.S.A. 1947, § 76-1405.

14-318-113. Assessor.

(a) The commissioners shall thereupon appoint an assessor to assess the benefits which will accrue to the real property within the district from the making of the improvement and the damages which will be caused thereby. The assessor shall take an oath that he will well and truly assess all benefits that will accrue to the landowners of the district by the making of the proposed improvement.

(b) He shall thereupon proceed to assess the lands within the district, and shall inscribe in a book each lot, block, and tract of land within the district. He shall put opposite each tract the assessment of the benefits and damages which will accrue to the lots, blocks, and tracts of land by reason of the improvement.

(c) His assessment shall embrace not merely the lands, but all railroads, tramroads, telegraph, telephone, and pipelines and other improvements on real property that will be benefited by the making of the improvement.

(d) The assessor shall place opposite each tract the name of the supposed owner as shown by the last county assessment. However, a mistake in the name shall not vitiate the assessment, and the assessor may correct errors which occur in the county assessment list.

(e) The assessor shall also assess all damages that will accrue to any landowner by reason of the proposed improvement, including all injury to lands taken or damaged. Where the assessor returns no such damages as to any tract or parcel of land, it shall be deemed a finding by him that no damages will be sustained.

(f) When the board shall make the levy of taxes, it shall be the duty of the assessor to extend the amount levied and set the amount opposite each benefit assessed in a column marked "Annual Collection."

(g) The assessor shall hold his office at the pleasure of the board, which can fill any vacancy in the position of assessor.

History. Acts 1938 (Ex. Sess.), No. 23, §§ 4, 9; A.S.A. 1947, No. 23, §§ 76-1405, 76-1410.

14-318-114. Duties of the county clerk and the collector.

(a) It shall be the duty of the county clerk of the county to extend the taxes annually upon the tax books of the county until the levy is exhausted. For his services he shall receive a commission of one-half of one percent ($\frac{1}{2}$ of 1%) of the amount so extended.

(b) It shall then be the duty of the collector to collect each year the taxes extended upon the book along with the other taxes until the entire levy is exhausted. For his services in making such collections, the collector shall receive a commission of one-half of one percent ($\frac{1}{2}$ of 1%), and the taxes shall by the collector be paid over to the depository of the district at the same time that he pays over the county funds.

(c) If any collector shall fail to collect the improvement tax along with the other taxes, he shall be subject to a penalty of twenty-five dollars (\$25.00) for each instance in which he shall collect from an individual the other taxes and omit the improvement tax, unless the improvement tax has been enjoined by a court of competent jurisdiction to be recovered in a suit brought by the commissioners to the use of the district; and the county clerk shall be subject to a like penalty for each tract of land that he omits from the tax books.

History. Acts 1938 (Ex. Sess.), No. 23, § 9; A.S.A. 1947, § 76-1410.

14-318-115. Assessment order — Lien — Remedy.

(a) The board of commissioners of the district shall, at the same time that the assessment of benefits is equalized or at any time thereafter, enter upon its records an order, which shall have all the force of a judgment, providing that there shall be assessed upon the real property of the district a tax sufficient to pay the estimated cost of the improvement with ten percent (10%) added for unforeseen contingencies. This tax is to be paid by the real property in the district in proportion to the amount of the assessment of benefits thereon and is to be paid in annual installments, payable not to exceed ten percent (10%) for any one (1) year, as provided in the order.

(b) The tax so levied shall be a lien upon all the real property in the district from the time the tax is levied and shall be entitled to preference over all demands, executions, encumbrances, or liens whensoever created. It shall continue until the assessment, with any penalty and costs that may accrue thereon, shall have been paid.

(c) The remedy against the levy of taxes shall be by suit in chancery, and the suit must be brought within thirty (30) days from the time that the levy was made. On such appeal the presumption shall be in favor of the legality of the tax.

(d) The levy shall be only for an amount sufficient to pay for the rights-of-way required for the improvement and to pay all damages caused by its construction or to pay the bonds which may be issued by the district with the interest thereon and its necessary operating expenses.

History. Acts 1938 (Ex. Sess.), No. 23,
§ 7; A.S.A. 1947, § 76-1408.

14-318-116. Filing assessments — Notice — Hearing.

(a) The assessment shall be filed with the county clerk of the county and the secretary of the board shall thereupon give notice of its filing by publication once a week for two (2) weeks in a newspaper published and having a bona fide circulation in the county.

(b) This notice may be in the following form:

"Notice is hereby given that the assessment of benefits and damages of District Number has been filed in the office of the County Clerk of County, and where it is open to inspection. All persons wishing to be heard on the assessment will be heard by the commissioners and the assessor of the district between the hours of 10 a. m. and 4 p. m., at, in the City of
. . . , Arkansas, on the day of, 19

.....
Secretary."

(c) On the day named in the notice, it shall be the duty of the commissioners and assessor to meet together at the place named as a board

of equalization and to hear all complaints against the assessment and to equalize and adjust the assessment. Their determination shall be final unless suit is brought in the chancery court within thirty (30) days to review it.

History. Acts 1938 (Ex. Sess.), No. 23,
§ 5; A.S.A. 1947, § 76-1406.

14-318-117. Interest on assessment.

The assessment of the benefits shall bear interest at the rate of six percent (6%) per annum from the time it is equalized, but the interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest, or the interest may be first collected.

History. Acts 1938 (Ex. Sess.), No. 23,
§ 8; A.S.A. 1947, § 76-1409.

14-318-118. Reassessment of benefits.

The commissioners may, not more often than once a year, require the assessor to reassess the benefits in the district. In the event the district shall have incurred any indebtedness or issued bonds, the total amount of assessed benefits shall never be diminished. The reassessment shall be made, advertised, and equalized in the same manner as provided herein for making the original assessment.

History. Acts 1938 (Ex. Sess.), No. 23,
§ 6; A.S.A. 1947, § 76-1407.

14-318-119. Time for payment of tax — Collection of delinquent taxes — Right of redemption.

(a) All taxes levied under the terms of this chapter shall be payable between the first Monday in January and April 10 of each year. If any taxes levied by the board in pursuance to this chapter are not paid at maturity, the collector shall not embrace the taxes in the taxes for which he shall sell the lands, but he shall report the delinquencies to the board of commissioners of the district, who shall add to the amount of the tax a penalty of twenty-five percent (25%).

(b) The board of commissioners shall enforce the collection by chancery proceedings in the chancery court of the county, in the manner provided by §§ 14-121-426 — 14-121-432, but the owner of property sold for taxes thereunder shall have the right to redeem it at any time within two (2) years from the time when his lands have been stricken off by the commissioner making the sale.

History. Acts 1938 (Ex. Sess.), No. 23, § 11; A.S.A. 1947, § 76-1412.

14-318-120. Payment of improvement taxes with general taxes.

No property owner shall be allowed to pay his general taxes without paying the improvement taxes herein provided for.

History. Acts 1938 (Ex. Sess.), No. 23, § 9; A.S.A. 1947, § 76-1410.

14-318-121. Additional levies in event of deficiency — Mandamus.

(a) If the tax first levied shall prove insufficient to pay the bonds, both the principal and interest, issued by the board of commissioners on account of such improvement, as hereinafter provided, as the bonds shall become due and payable, the board shall from time to time make further levies upon the property previously assessed for sums sufficient to complete the improvement and to pay such bonds and interest. Any such levies shall be extended and collected in the same manner as the first levy.

(b) However, the total levy shall in no case exceed the value of the benefits assessed on the property with interest, and the performance of the duties may be enforced by mandamus at the instance of any person or board interested.

History. Acts 1938 (Ex. Sess.), No. 23, § 10; A.S.A. 1947, § 76-1411.

RESEARCH REFERENCES

Ark. L. Rev. Mandamus to Review Administrative Action in Arkansas, 11 Ark. L. Rev. 353.

14-318-122. Commissioners' warrant.

(a) The depository shall pay out no money save upon the order of the board and upon a warrant signed by at least two (2) of the commissioners.

(b) Every warrant shall state upon its face to whom, the amount, and the purpose for which it is issued.

(c) All warrants shall be dated and shall be numbered consecutively, in a record to be kept by the board of the number and amount of each. No warrant shall be paid unless there are in the treasury funds enough to pay all outstanding warrants bearing a lower number.

(d) No warrant shall be increased by reason of any depreciation in the market value thereof, nor shall any contract or warrant be made payable or paid in anything but currency.

History. Acts 1938 (Ex. Sess.), No. 23,
§ 12; A.S.A. 1947, § 76-1413.

14-318-123. Negotiable notes or bonds — Preliminary expenses and work.

(a) In order to meet preliminary expenses and to do the work, the board may issue the negotiable notes or bonds of the district, signed by the members of the board and bearing a rate of interest not exceeding six percent (6%) per annum. The board may pledge and mortgage all assessment of benefits for the payment thereof.

(b) No bonds issued under the terms of this chapter shall run for more than thirty (30) years, and all issues of bonds may be divided so that a portion thereof may mature each year as the assessments are collected or they may all be made payable at the same time with proper provisions for a sinking fund.

(c) The bonds shall not be sold for less than par value without the unanimous vote of the board.

History. Acts 1938 (Ex. Sess.), No. 23,
§ 14; A.S.A. 1947, § 76-1415.

14-318-124. Payment of preliminary expenses after failure to make improvement.

In case for any reason the improvement contemplated by any district organized under this chapter is not made, the preliminary expense shall be a first lien upon all the land in the district and shall be paid by a levy of a tax thereon upon the assessed value for county and state taxation, which levy shall be made by the chancery court of the county and shall be collected by a receiver to be appointed by the court.

History. Acts 1938 (Ex. Sess.), No. 23,
§ 18; A.S.A. 1947, § 76-1419.

14-318-125. Misuse of bonds or money arising from sale of bonds — Penalties.

(a) It shall not be lawful for the board of the district or any officer, member, or agent thereof to pledge or deposit any bond or coupon issued under the provisions of this chapter as security for payment of any borrowed money or any debt or obligation of the board or any person, firm, or corporation whatever; nor shall it be lawful for the board of the district or any officer, member, or agent thereof to appropriate or use any money arising from the sale of bonds authorized to be issued under this chapter to any use or purpose whatever other than is herein specified and expressly directed.

(b) Any officer, member, or agent of the board of the district who shall violate any of the provisions of this section shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in

the penitentiary for not less than one (1) year nor more than five (5) years.

History. Acts 1938 (Ex. Sess.), No. 23, § 16; A.S.A. 1947, § 76-1417.

14-318-126. Priority of actions — Appeals.

All cases involving the validity of the districts or the assessments of benefits and all suits to foreclose the lien of taxes shall be deemed matters of public interest and shall be advanced and disposed of at the earliest possible moment. All appeals therefrom must be taken and perfected within thirty (30) days.

History. Acts 1938 (Ex. Sess.), No. 23, § 17; A.S.A. 1947, § 76-1418.

CHAPTER 319

COUNTY BRIDGE IMPROVEMENT DISTRICTS

SECTION.

- 14-319-101. Powers of county court — Organization of improvement districts.
 14-319-102. Bonds — Default.
 14-319-103. Suits to collect taxes — Costs and fees for summons.
 14-319-104. Unencumbered bridges —

SECTION.

- Prohibition on collection of tolls.
 14-319-105. Title to bridges and property of bridge improvement districts vested in State Highway Commission — Prior vesting ratified.

Effective Dates. Acts 1873, No. 31, § 30: effective on passage.

Acts 1927, No. 38, § 3: approved Mar. 1, 1927. Emergency clause provided: "It is hereby ascertained and declared that by reason of the want of repairs upon numerous bridges constructed by bridge improvement districts, and by reason of the defective condition of the approaches thereto, the safety of the traveling public is imperiled, and it is therefore ascertained and declared that an emergency exists, requiring that this act be put into immediate operation for the public safety, and it is therefore enacted that this act shall take effect and be in force immediately upon its passage."

Acts 1935, No. 125, § 2: Mar. 19, 1935. Emergency declared.

Acts 1938 (Ex. Sess.), No. 3, § 3: Mar. 25, 1938. Emergency clause provided: "Whereas, the continued operations of toll bridges in this State is forcing a great

amount of tourist trade and traffic from the State of Arkansas, and

"Whereas, the Federal Government refuses to lend Federal aid on any road leading to a toll bridge, and

"Whereas, the collection of tolls is working a hardship on the citizens of this State, and

"Whereas, the State of Arkansas needs the additional revenue that would accrue from a large tourist traffic, in order to meet Federal funds in the building of roads, an emergency is therefore declared and this act shall be in full force and effect from and after its passage and approval."

Acts 1939 (Ex. Sess.), No. 5, § 3: approved Aug. 18, 1939. Emergency clause provided: "Many Counties now have adopted salary bills for its officers including Circuit Clerks and these require the prompt collection, payment and settlement of all costs, fees and emoluments of

office by such Clerk, and the institution and pending of legal proceedings in the Courts of this state for the collection of delinquent assessments in Bridge Improvement District cases necessitate the issuance of summons against the defendants in such proceedings and require the

Circuit Clerk to issue such original summons separately against numerous defendants, and it is therefore found and declared that an emergency exists and this act shall be in force from and after its passage and shall apply to all such pending suits."

14-319-101. Powers of county court — Organization of improvement districts.

(a) When a bridge is necessary over any stream, the county court is authorized to contract for the building and keeping the bridge in repair, and, when it shall be necessary, over any stream which divides one (1) county from another, the county court of each county shall join in the agreement and make contracts for building and keeping the bridge in repair. The cost thereof shall be defrayed by both counties, in such proportions as the county courts of the counties may agree upon, having due regard for the assessed value of the real estate and personal property in and the benefits to accrue to the people of each county.

(b) When any bridge may be deemed necessary, authority is given to organize a bridge improvement district. The bridge improvement district, when organized, may issue bonds and proceed to sell and dispose of the bonds and construct the bridge. In the organization of the bridge improvement district, the district shall be organized in the manner and under the laws of the State of Arkansas as now provided for the organization of drainage districts, and all the procedures now provided by law for the organization of drainage districts shall apply to the organization of the bridge improvement district as fully and completely as if set out in this chapter.

History. Acts 1873, No. 31, § 16, p. 53; § 824; Acts 1935, No. 125, § 1; Pope's 1907, No. 44, § 1, p. 110; C. & M. Dig., Dig., § 961; A.S.A. 1947, § 76-1501.

CASE NOTES

Interstate Agreements.

Where portion of bridge that was across and over state lines was in Arkansas and subject to the jurisdiction of the county court and the other portion was in other state subject to its jurisdiction and both parties had entered into contracts with each other and bridge company to maintain the roadways of the bridge continuously open for the use of the public, the

county court could not order the dismantling of its portion of the bridge without notice to the other party to the contract with an opportunity for a hearing on the right to destroy. *City of Memphis v. Ingram*, 195 F.2d 338 (8th Cir. 1952).

Cited: *Board of Dirs. v. Collier*, 104 Ark. 425, 149 S.W. 66 (1912); *Mullins v. City of Little Rock*, 113 Ark. 590, 168 S.W. 1074 (1914).

14-319-102. Bonds — Default.

(a)(1) Any district organized under the laws of this state or created by special act for the purpose of building a bridge over a nonnavigable stream may issue its negotiable bonds bearing interest at a rate of interest not exceeding six percent (6%) per annum, for the purpose of raising money with which to construct approaches to the bridges, or to make repairs on the approaches and bridges, or to fund its debts, or any part thereof, or for any or all of these purposes.

(2) To secure the bonds, it may make a pledge and mortgage of its assessment of benefits and revenues.

(b)(1) If any bond or interest coupon on any bond issued by the board of commissioners or directors of the district is not paid within thirty (30) days after its maturity, it shall be the duty of any court of competent jurisdiction, on the application of the holder of any such bond or interest coupon so overdue, or of the trustee named in the pledge or mortgage made for the security of the bonds, to appoint a receiver to collect the taxes of the bridge improvement district and an assessor to reassess the benefits, if necessary.

(2) The proceeds of the taxes and collection shall be applied, after the payment of costs, first to the overdue interest and then to the payment pro rata of all bonds issued by the board which are then due and payable.

(3) The receiver may be directed by suit to foreclose the lien of taxes on the lands, and the suits so brought by the receiver shall be conducted in all matters as suits by the board, as provided in the act creating the district, and with like effect.

(4) The receiver shall be authorized to have the taxes collected, as far as possible, by spreading the taxes upon the tax books of the county or counties where the district is situated.

(5) The decrees and deeds in such suits shall have the same presumption in their favor as in the case of suits brought by the board.

(6) When all of the delinquent sums shall have been paid, the receiver shall be discharged and the affairs of the district conducted by its board of commissioners or directors.

History. Acts 1927, No. 38, §§ 1, 2;
Pope's Dig., §§ 6533, 6534; A.S.A. 1947,
§§ 76-1502, 76-1503.

14-319-103. Suits to collect taxes — Costs and fees for summons.

(a) Wherever legal proceedings are commenced or are now pending against property owners who have failed to pay required assessments made against them in any bridge improvement district in this state and summons is or has been issued against the property owners, the circuit clerk issuing the summons shall be required to collect and account for the cost, fees, and the taxes now provided by law for each and

every original summons so issued, whether the summons is against one (1) defendant or several defendants.

(b) As used in this section, "original summons" includes every summons issued by the clerk against one (1) defendant or several defendants in the proceedings, whether the summons is a duplicate summons issued for the officer to make his return for service upon, and includes the name of only one (1) or all defendants and whether issued concurrently or consecutively, provided that the original summons shall not be construed to include the copy to be left with the defendant or posted upon his property by the officer serving it.

History. Acts 1939 (Ex. Sess.), No. 5, §§ 1, 2; A.S.A. 1947, §§ 76-1504, 76-1505.

Cross References. Suit for collection of taxes, § 14-86-1208.

Publisher's Notes. As to the duties of the circuit clerk, see § 14-86-1001.

14-319-104. Unencumbered bridges — Prohibition on collection of tolls.

(a) All bridges in districts where there has been sufficient money collected to pay all outstanding lawful indebtedness of the district are declared free, and they shall become the sole property of the State of Arkansas and shall be maintained by the Arkansas State Highway and Transportation Department as is now provided by law.

(b) It shall be unlawful for the commissioners of any bridge district in this state to collect any tolls for the use of any bridge where the bridge district has sufficient money already collected to pay all the lawful outstanding indebtedness of the bridge district.

(c) Any commissioner, agent, or employee of any bridge district in this state which has sufficient tolls collected to pay all outstanding lawful indebtedness of the district who shall collect any tolls in violation of the provisions of this section shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine not to exceed one hundred dollars (\$100). Each day on which tolls are unlawfully collected shall constitute a separate offense.

History. Acts 1938 (Ex. Sess.), No. 3, §§ 1-3; A.S.A. 1947, §§ 76-1506 — 76-1508.

CASE NOTES

Surplus Funds.

Where state took over bridge built by district and the bridge was maintained, operated, and controlled by the State Highway and Transportation Department as part of the highway system, surplus funds held by the commissioners of the district in excess of district's indebtedness was properly ordered covered into the

state treasury, since state had assumed the obligation of maintaining and operating the bridge, obligation was being performed and it must be assumed would continue to be performed, the return of the tolls would be impossible, and surplus was a part of the assets of the district to which the state took title; but order should not limit use of fund to mainte-

nance of bridge, there being a presumption that the state will perform its obligation to maintain the bridge out of funds appropriated and available for that pur-

pose. *Red River Bridge Dist. v. State ex rel. State Hwy. Comm'n*, 201 Ark. 365, 144 S.W.2d 723 (1940).

14-319-105. Title to bridges and property of bridge improvement districts vested in State Highway Commission — Prior vesting ratified.

(a) The titles of the bridges and to all other real, personal, and mixed properties of bridge improvement districts which either are no longer under control by their commissioners by reason of the assumption heretofore of both the maintenance and control of their bridges by the State Highway Commission pursuant to the provisions of §§ 27-67-101, 27-67-201, or any other law, or which have heretofore fully discharged the principal and interest of their bonds and other indebtedness in part to the state aid received by them are divested out of the districts and of any political subdivisions of the state to which title may have nominally passed and fully and finally vested in the State Highway Commission. All such divestitures and vestings of title as may have heretofore occurred, either actually or ostensibly by reason of the assumption of both the maintenance and control of the bridges by the State Highway Commission, are fully ratified and confirmed as of the dates when they respectively occurred or ostensibly occurred. But all such divestitures and vestings, both actual or nominal and prospective, shall not extend to the titles to lands within the districts which were acquired by the districts through foreclosure of their liens thereon and were not subsequently disposed of, nor to the liens for delinquent assessments due the districts, and all such titles to lands so acquired and all such delinquent assessments are fully and finally cancelled.

(b) All funds on hand with the districts shall be promptly paid over to the Treasurer of State for deposit as a nonrevenue receipt in the fund from which the Arkansas State Highway and Transportation Department is maintained, and there used for the same purposes for which other moneys in the fund may be used.

History. Acts 1953, No. 147, § 1;
A.S.A. 1947, § 76-1523.

CHAPTER 320

INTERSTATE BRIDGE DISTRICTS

SECTION.

- 14-320-101. Scope.
- 14-320-102. Board of commissioners.
- 14-320-103. Employment of personnel.
- 14-320-104. Plans — Map and specifications.
- 14-320-105. Petition for district establishment — Contents and signatures.
- 14-320-106. Petition — Notice, hearing, and appeal.
- 14-320-107. Assessment of lands — Procedure.
- 14-320-108. Notice and filing of assessment — Hearing and appeal.
- 14-320-109. Paying the assessment.
- 14-320-110. Determination of construction costs.
- 14-320-111. Levy of tax.

SECTION.

- 14-320-112. Collection of taxes — Delinquency.
- 14-320-113. Additional tax levy.
- 14-320-114. Borrowing money — Bond issues.
- 14-320-115. Lien of bonds — Tax levy — Default.
- 14-320-116. Revenue bonds — Tax levy when tolls insufficient.
- 14-320-117. Applicability of federal law.
- 14-320-118. Tolls — Transfer of bridge to state.
- 14-320-119. Contracts with federal government, highway commission, local governments, or other states.
- 14-320-120. Acquisition of real property — Eminent domain.

Effective Dates. Acts 1951, No. 381, § 23: Mar. 20, 1951. Emergency clause provided: "Since the demands of transportation over and across interstate bridges are such that the facilities to be obtained through this act are of immediate need, an emergency exists within the meaning

of the constitution, this act being necessary for the immediate preservation of the public health, peace and safety, and this act shall, therefore, be in full force and effect from and after its passage and approval by the Governor."

14-320-101. Scope.

The terms and provisions of this chapter shall only be applicable for the creation of bridge districts for the construction, operation, and maintenance of interstate bridges and approaches thereto over and across the navigable rivers where the river forms a state boundary. Bridges to be constructed under the terms and provisions of this chapter can be constructed within or without the boundaries or territorial limits of the district.

History. Acts 1951, No. 381, § 20; A.S.A. 1947, § 76-2020.

14-320-102. Board of commissioners.

(a) When the circuit court has established the bridge district, it shall appoint five (5) owners of real property within the district to act as commissioners.

(b) Each commissioner shall take the oath of office required by the Arkansas Constitution, Article 19, Section 20, and shall also swear that he will not, directly or indirectly, be interested in any contract made by the board of commissioners and that he will well and truly assess all benefits resulting from the improvement. Any commissioner failing to take the oath within thirty (30) days after his appointment shall be deemed to have declined, and his place shall be filled by the circuit court, if in session, if not, by the circuit judge.

(c) All vacancies on the board shall be filled by the circuit court or the circuit judge in vacation; but if a majority, in number or value, of the owners of real property in the district shall petition for the appointment of particular persons as commissioners, it shall be the duty of the circuit court or circuit judge to appoint the persons so designated.

(d) The board shall select from its members a chairman, vice chairman, secretary, and treasurer. A majority of the members of the board shall constitute a quorum.

(e) The circuit judge shall remove any member of the board upon petition signed by a majority, in number or value, of the owners of real property in the district.

(f) The commissioners herein provided for shall receive the sum of ten dollars (\$10.00) each for every day or fraction thereof in which they are called upon to attend meetings of the board, together with their necessary traveling expenses.

History. Acts 1951, No. 381, §§ 3, 4;
A.S.A. 1947, §§ 76-2003, 76-2004.

14-320-103. Employment of personnel.

The board of commissioners shall have the power to employ engineers, attorneys, auditors, manager, or superintendent, and such other employees as may be necessary for the orderly functioning of the district and to fix their respective compensation.

History. Acts 1951, No. 381, § 5;
A.S.A. 1947, § 76-2005.

14-320-104. Plans — Map and specifications.

(a) As soon as the board of commissioners shall have formed plans for the bridge and the approaches thereto, and shall have ascertained the cost thereof, it shall file the plans with the circuit clerk.

(b) The plans shall be accompanied by a map showing the location of the bridge and the approaches thereto, together with specifications

fully describing the construction and character of the improvement to be made.

History. Acts 1951, No. 381, § 6;
A.S.A. 1947, § 76-2006.

14-320-105. Petition for district establishment — Contents and signatures.

(a) When twenty-five (25) or more owners of real property within a proposed district shall petition the circuit court of the county in which the largest portion of the lands of the proposed district are situated to establish a bridge district to construct, maintain, and operate an interstate bridge and the approaches thereto embracing their property, the petition describing the region or area to be embraced within the district, and describing generally the location of the bridge, the proposed plan of financing the construction, maintenance, and operation of the bridge, together with a general idea of its character and expenses, accompanied by a certificate or resolution from the State Highway Commission showing the need and necessity for the construction of the bridge, then it shall be the duty of the circuit court to enter upon its records an order fixing a day and date for a hearing on the petition to determine whether or not the petition should be granted or denied.

(b) The petitions provided for herein may be signed by any person, firm, or corporation owning real property therein. Guardians may sign for their wards, and trustees, executors, and administrators may sign for the estates they represent.

History. Acts 1951, No. 381, §§ 1, 2;
A.S.A. 1947, §§ 76-2001, 76-2002.

14-320-106. Petition — Notice, hearing, and appeal.

(a) The circuit clerk shall thereupon give notice by publication for two (2) weeks in some newspaper published and having a general circulation in the counties within which the lands of the proposed district are situated, calling upon all persons owning property therein to appear before the court on the day and date fixed by the court to show cause in favor of or against the establishment of the district.

(b) At the time named in the notice, the circuit court, or the judge thereof in vacation, shall meet and hear all property owners within the proposed district who wish to appear and advocate or resist the establishment of the district. If it is deemed to the best interest of the owners of real property within the district that the district shall be created under the terms of this chapter, the court shall enter an order of record establishing the real property as an interstate bridge district which shall be subject to all the terms and provisions of this chapter.

(c) If upon the hearing provided for in subsection (b) of this section petitions are presented to the circuit court signed by a majority, either

in number or in value, of the owners of real property within the proposed district praying that the improvement be made, it shall thereupon be the duty of the circuit court to make an order establishing the district without further inquiry. If no such petitions are filed, it shall be the duty of the circuit court to investigate as provided in the preceding section and to establish the district if it is of the opinion that the establishment thereof will be to the advantage of the owners of real property therein.

(d) Any landowner feeling himself aggrieved by the order of the court shall have the right of appeal within thirty (30) days from the date the order was entered.

History. Acts 1951, No. 381, §§ 1, 2;
A.S.A. 1947, §§ 76-2001, 76-2002.

14-320-107. Assessment of lands — Procedure.

(a) The board of commissioners shall proceed to assess the lands within the district and shall inscribe in a book the description of each tract, piece, and parcel of land and assess the benefits to accrue to each tract, piece, and parcel of land by reason of such improvement and shall enter the assessment of benefits opposite the description thereof.

(b) The assessment shall embrace not merely the lands, but all public and corporate roads, railroads, tramroads, and other improvements on the lands that will be benefited by the improvement.

(c) They shall place opposite each tract, piece, and parcel of land the supposed name of the owner as shown by the last general assessment, but a mistake in name shall not vitiate the assessment. They may correct evident errors which occur in the county assessment list.

History. Acts 1951, No. 381, § 7;
A.S.A. 1947, § 76-2007.

14-320-108. Notice and filing of assessment — Hearing and appeal.

(a) When the assessment of benefits is completed, the board of commissioners shall subscribe the assessment and file it with the circuit clerk where it shall be kept and preserved as a public record.

(b) Upon the filing of the assessment of benefits, the circuit clerk shall give notice of filing by publication for two (2) weeks in some newspaper having a bona fide circulation in the counties in which the lands of the district are situated.

(c) The notice shall give a description of the lands assessed, and the owners of the lands may appear, if they desire, before the circuit court on a day therein named and present complaints, if they have any, against the assessment of any lands in the district.

(d) Any owner of real property within the district who conceives himself to be aggrieved by the assessment of benefits or deems the assessment of any lands to be inequitable shall present his complaint

to the circuit court at the first regular, adjourned, or special session held more than ten (10) days after publication of the notice. The circuit court shall consider the complaint and enter its findings thereon, either confirming the assessment or increasing or diminishing it.

(e) Its findings shall have the force and effect of a judgment, from which an appeal may be taken within twenty (20) days, either by the property owners or by the board of commissioners of the district.

History. Acts 1951, No. 381, § 8;
A.S.A. 1947, § 76-2008.

14-320-109. Paying the assessment.

(a) When the assessment of benefits has been made and filed, as provided herein, the property owner shall have the right to pay such assessment of benefits in full within sixty (60) days thereafter, but, if he does not avail himself of this privilege, the assessment of benefits shall bear interest at the rate of six percent (6%) per annum.

(b) The interest need not be computed until necessary to be sure the collections have not exceeded the total amount of the benefits so levied.

History. Acts 1951, No. 381, § 8;
A.S.A. 1947, § 76-2008.

14-320-110. Determination of construction costs.

(a) The circuit court, in determining the question of whether the cost of the improvement exceeds the benefits, shall be required to take into consideration only the amount that the district will be required to pay for the cost of the improvement. It shall credit against the total cost of the bridge and approaches thereto any and all grants or allocations of money made by the federal government through the Federal Highway Administration, grants of state aid made by the State Highway Commission, state aid made by the state or highway commission of any adjoining state, aid and grants from any county, city, or town of this state or adjoining state, and the annual amounts to be received by the district from tolls collected as provided in this chapter, and other financial assistance the district may receive from any other sources whatsoever.

(b) The interest to accrue on account of the issuance of bonds by the district shall not be construed as a part of the cost of construction.

History. Acts 1951, No. 381, § 9;
A.S.A. 1947, § 76-2009.

14-320-111. Levy of tax.

(a)(1) The circuit court shall, at the time the assessment of benefits is filed or at any subsequent time when called upon by the commissioners of the district, enter upon its records an order which shall have the force of a judgment, providing that there shall be assessed upon the real property of the district a tax sufficient to pay the district's proportionate part of the estimated cost of the improvement with ten percent (10%) added for unforeseen contingencies.

(2) This tax shall be paid by the real property owners in the district in the proportion to the amount of the assessment of benefits thereon and shall be paid in annual installments not to exceed twenty-five percent (25%) for any one (1) year as provided in the order.

(3) The tax so levied shall be a lien upon all the real property in the district from the time the tax is levied by the circuit court and shall be entitled to preference over all demands, executions, incumbrances, or liens whensoever created and shall continue until the assessment with penalty and costs that may accrue thereon have been paid.

(4) The remedy against the assessment of taxes shall be by appeal, and the appeal must be taken within twenty (20) days from the time the assessment has been made by the circuit court, and on appeal the presumption shall be in favor of the validity of the tax.

(b) If the commissioners do not deem it to the advantage of the district to proceed immediately with the construction of the improvement upon the filing and confirmation of the assessment of benefits, then they may report to the circuit court the rate of taxation necessary to be levied to pay the preliminary expenses of the district. They shall petition the court to continue the actual construction of the improvement to a more advantageous time, and thereupon it shall be the duty of the court to make a levy of taxes upon the real property in the district sufficient to pay the preliminary expenses with ten percent (10%) added for unforeseen contingencies, and shall continue the actual construction of the improvement to a more advantageous time.

History. Acts 1951, No. 381, § 10;
A.S.A. 1947, § 76-2010.

14-320-112. Collection of taxes — Delinquency.

(a) The amount of taxes provided for in this chapter shall be annually extended upon the tax books of the county by the county clerk. The tax shall be collected by the collector of the county along with other taxes. For his services in making the collection, the collector shall receive the same compensation he now receives or may hereafter receive, as fixed by law, for the collection of state and county taxes. The taxes so collected shall be paid over by the collector to the board of commissioners of the district at the same time as he is required to make settlement with the county treasurer for general taxes.

(b) All taxes levied under the terms of this chapter shall be payable at the same time and in the same manner as state and county taxes. If any taxes levied by the circuit court in pursuance to this chapter are not paid as aforesaid, the collector shall certify the delinquents, together with a penalty of twenty-five percent (25%), to the clerk of the chancery court in the same manner as provided by §§ 14-86-1101, 14-86-1102, and 14-86-1104 — 14-86-1106 and acts amendatory thereto.

(c) The board of commissioners shall enforce the collection of delinquent tax, penalty, and costs by chancery proceedings in a court of the county in which the lands are situated in accordance with the same procedure as now prescribed for the foreclosure of delinquent taxes due drainage districts as set forth in §§ 14-121-426 — 14-121-432.

History. Acts 1951, No. 381, § 11;
A.S.A. 1947, § 76-2011.

14-320-113. Additional tax levy.

If the tax first levied shall prove insufficient to complete the improvement or to pay the bonds, both principal and interest, issued by the board of commissioners for the improvement, as provided in this chapter, as the principal and interest shall become due and payable, then the board of commissioners shall from time to time report the amount of deficiency to the circuit court. It shall thereupon make levies upon the property previously assessed for sums sufficient to complete the improvement and to pay the bonds and interest in the same manner as the first levy.

History. Acts 1951, No. 381, § 12;
A.S.A. 1947, § 76-2012.

14-320-114. Borrowing money — Bond issues.

In order to carry out the purposes for which the district is organized and created, the board of commissioners may borrow money at a rate of interest not exceeding six percent (6%) per annum and issue negotiable bonds therefor signed by the chairman or vice chairman and secretary when so authorized by the board of commissioners and may pledge all assessments of benefits for the repayment thereof. No bonds issued under the terms of this chapter shall run for more than thirty (30) years, and all issues of bonds may be divided so that a portion thereof may mature each year as the assessments are collected.

History. Acts 1951, No. 381, § 13;
A.S.A. 1947, § 76-2013.

14-320-115. Lien of bonds — Tax levy — Default.

(a) All bonds issued by the board of commissioners shall be secured by a lien on all lands, railroads, and tramroads in the district. The board of commissioners shall be required to levy a tax annually and to collect the tax under the provisions of this chapter so long as it is necessary and required to pay any bonds issued or obligations contracted under the authority granted in this subchapter. The making of such levy of tax on the assessment of benefits and collection thereof may be enforced by mandamus.

(b) If any bond or interest coupon on any bond issued by the board of commissioners is not paid within thirty (30) days after its maturity, it shall be the duty of the chancery court of the proper county, upon application of any holder of the bond or interest coupon so overdue and unpaid, to appoint a receiver or to appoint the board of commissioners as receiver of the court to collect the taxes aforesaid. The proceeds of the taxes so collected shall be applied after payment of cost, first to the overdue interest and then to the payment, pro rata, of all bonds issued by the board of commissioners which are then due and payable. The receiver or board of commissioners may be directed by suit to foreclose the lien of the taxes on the lands, and the suits so brought by the receiver or board of commissioners shall be conducted in all matters as suits are conducted as hereinbefore provided and with like effect. The decrees and deeds in this chapter shall have the same presumption in their favor. However, when all sums have been paid, the receiver or board of commissioners shall be discharged as the receiver, and the affairs of the district shall thereafter be conducted by the board of commissioners as provided in this chapter.

History. Acts 1951, No. 381, § 14;
A.S.A. 1947, § 76-2014.

14-320-116. Revenue bonds — Tax levy when tolls insufficient.

(a) If the board of commissioners shall have ascertained that the construction, maintenance, and operation of the interstate bridge can be financed in whole or in part by the issuance of revenue bonds payable from the tolls so charged and collected, then the board of commissioners is given and granted the full power and authority to issue revenue bonds for the part or portion which can be so financed, the bonds to be payable over a period of not exceeding thirty (30) years, and shall bear interest at a rate not exceeding six percent (6%) per annum.

(b) To secure the payment of the revenue bonds, together with the interest thereon, the board of commissioners is granted the power and authority to pledge all or any part or portion of the tolls charged and collected or to be collected therefrom as hereinafter provided, and as required to do so in order to finance the bonds. The board of commissioners shall have the right to pledge all or any part or portion of the

assessment of benefits as additional security in the event the tolls collected are insufficient to pay the principal and interest of the bonded indebtedness.

(c) If it becomes necessary in order to obtain proper financing of the construction of the bridge, the board of commissioners is granted the power and authority to enter into contracts with the bond-holders or the trustees of the bond issues to guarantee and underwrite the payment of the principal and interest on the bonded indebtedness, and to obligate the board of commissioners and the district to levy or cause to be levied a sufficient tax against the assessment of benefits if the tolls collected in any year shall be insufficient to fully pay off the principal and interest on the bonded debt.

(d) In the event the tolls charged and collected are insufficient to pay the principal and interest of the bonded debt as it matures, then the board of commissioners is required to file a petition in the circuit court setting out the deficiency. Thereupon, the court shall levy a tax of a sufficient amount to make up the deficit with ten percent (10%) added for unforeseen contingencies.

(e) The board of commissioners and the circuit court may be required by mandamus to levy the tax in any proceedings instituted by the trustee or trustees of the bondholders or any individual bondholder who may hold any unpaid bond or interest coupon. The right to require a levy of tax against the assessment of benefits shall be a continuing right which may be exercised by the trustees or bondholders until the full amount of the principal and interest of the bonded debt has been paid.

History. Acts 1951, No. 381, § 15;
A.S.A. 1947, § 76-2015.

14-320-117. Applicability of federal law.

All interstate bridges shall be constructed under the terms and provisions of the "General Bridge Act of 1946" and any act amendatory thereto.

History. Acts 1951, No. 381, § 16; referred to in this section, is codified as § 33
A.S.A. 1947, § 76-2016. U.S.C. §§ 525-533.
U.S. Code. The General Bridge Act, re-

14-320-118. Tolls — Transfer of bridge to state.

(a) The board of commissioners is granted the right and power to construct, operate, and maintain the bridge as a toll bridge. It shall have the power to fix and determine, subject to the terms and provisions of the General Bridge Act, the tolls to be charged for transit over the bridge for motor-propelled vehicles, animals, foot passengers, pipelines, or other persons, firms, or corporations using the bridge, and the rates so prescribed shall be the legal rate or rates demanded and received for the transit.

(b) The rates for tolls may be increased or decreased by the board of commissioners, subject however, to the terms and provisions of the General Bridge Act of Congress.

(c) The board of commissioners shall make an annual report of all tolls collected to the trustees representing the bond-holders and to the State Highway Commission. One (1) copy of the report shall be filed with the clerk of the circuit court of the county in which the bridge is located.

(d) When the bonded indebtedness and all claims and liabilities have been fully paid and discharged, the bridge shall become a free bridge, and the board of commissioners shall thereupon convey all of its right, title, and interest in the bridge to the State of Arkansas. Thereafter, the State Highway Commission shall maintain and operate the bridge as a part of its highway system.

(e) The tolls so charged and collected for the use of the bridge shall be used as follows:

(1) To the payment of reasonable cost of maintaining, repairing, and operating the bridge and approaches thereto under economical management;

(2) To the payment of the principal and interest on the bonded indebtedness; and

(3) The balance, if any, to be placed in a sinking fund to be used for future maintenance and operation and the retirement of bond indebtedness.

History. Acts 1951, No. 381, § 17; referred to herein, is codified as § 33 U.S.C. A.S.A. 1947, § 76-2017. 525-533.

U.S. Code. The General Bridge Act, re-

14-320-119. Contracts with federal government, highway commission, local governments, or other states.

(a) For the purpose of carrying into effect the objects and purposes of this chapter, the board of commissioners shall have full power and authority to:

(1) Negotiate and enter into contracts with the federal government or any of its agencies, the State Highway Commission, or the state highway commission of any adjoining state where the bridge may be located;

(2) To contract with any counties, cities, or towns of the State of Arkansas and any adjoining state whereby the district may receive financial aid in the construction, maintenance, and operation of the bridge and approaches thereto;

(3) To contract for the joint ownership thereof and the means and manner of operating and maintaining the bridge and approaches thereto.

(b) The powers herein granted to the board of commissioners shall be broad and liberal powers to carry out the purposes of this chapter.

History. Acts 1951, No. 381, § 18;
A.S.A. 1947, § 76-2018.

14-320-120. Acquisition of real property — Eminent domain.

(a) The board of commissioners acting for and on behalf of the district shall have the right, power, and authority to purchase, hold, and possess real estate necessary for the purposes for which the district was organized. In addition thereto, the district organized under this chapter shall have the right of eminent domain.

(b) If condemnation proceedings become necessary, such proceedings shall be instituted and conducted in the same manner as now provided by § 14-91-104.

History. Acts 1951, No. 381, § 19;
A.S.A. 1947, § 76-2019.

CHAPTER 321

VIADUCT IMPROVEMENT DISTRICTS

SECTION.

- 14-321-101. Scope.
- 14-321-102. Commissioners.
- 14-321-103. Limitations on bond issue —
Interest.
- 14-321-104. Bonds sold for less than par
when carrying lower in-
terest rate.

SECTION.

- 14-321-105. Plans to be submitted to
county court.
- 14-321-106. Assessment of benefits.
- 14-321-107. Land in different counties —
Assessment hearings in
respective counties.

Effective Dates. Acts 1923 (1st Ex. Sess.), No. 21, § 9; Oct. 15, 1923. Emergency declared.

14-321-101. Scope.

This chapter shall apply to all improvement districts created for the construction of a free viaduct connecting with a bridge over a navigable river.

History. Acts 1923 (1st Ex. Sess.), No. 21, § 1; Pope's Dig., § 6541; A.S.A. 1947, § 76-1301.

14-321-102. Commissioners.

In all viaduct districts described in § 14-321-101, commissioners shall be elected in the manner provided by the laws applying to such districts respectively.

History. Acts 1923 (1st Ex. Sess.), No. 21, § 8; Pope's Dig., § 6548; A.S.A. 1947, § 76-1307.

14-321-103. Limitations on bond issue — Interest.

(a) In all the viaduct improvement districts described in § 14-321-101, limitations on bonds that may be issued by a district shall not apply to interest on any bonds or borrowed money.

(b) If bonds are issued before the construction work is completed, limitations on the issuance of bonds to a part of the total cost of construction shall apply to the estimated total cost of construction as estimated by the engineer for the district and approved by the commissioners at the time the bonds are issued. Bonds may be issued from time to time on revisions of the estimates.

History. Acts 1923 (1st Ex. Sess.), No. 21, § 2; Pope's Dig., § 6542; A.S.A. 1947.

14-321-104. Bonds sold for less than par when carrying lower interest rate.

If any viaduct improvement district described in § 14-321-101, where it is or may be provided by law that the interest on bonds issued by the district shall not exceed six percent (6%) per annum, nor the bonds be sold for less than par, bonds bearing a lower rate of interest may be issued by the district and sold at less than par, provided that the proceeds of the sale of the bonds issued by the district shall not be less than the proceeds of the sale of six percent (6%) bonds at par.

History. Acts 1923 (1st Ex. Sess.), No. 21, § 3; Pope's Dig., § 6543; A.S.A. 1947, § 76-1303.

14-321-105. Plans to be submitted to county court.

The commissioners of the viaduct improvement districts described in § 14-321-101 shall submit their plans for the improvement to the county court in the county in which the viaduct is to be situated for its approval or disapproval. Appeals from the order of the court may be taken by the commissioners for the district, or any interested property owner, and shall be perfected within thirty (30) days from the time the order is entered of record.

History. Acts 1923 (1st Ex. Sess.), No. 21, § 4; Pope's Dig., § 6544; A.S.A. 1947, § 76-1304.

CASE NOTES

Cited: *Hiter v. Harahan Viaduct Imp.*
Dist., 165 Ark. 351, 264 S.W. 863 (1924).

14-321-106. Assessment of benefits.

The assessment of benefits in any viaduct improvement district described in § 14-321-101 shall be made according to the actual benefits the lands will realize from the making and maintenance of the improvement. The commissioners or assessors in the district, in making the assessment of benefits, shall not be required to make them in zones of any form, or proportion them in circular zones of any particular width with reference to the viaduct. However, the commissioners or assessors are not prohibited from making their assessment of benefits on the basis of zones circular or in other form, if, in their opinion, this is the best basis on which to ascertain and fix the amount of the benefits to the several tracts and parcels of land in the district.

History. Acts 1923 (1st Ex. Sess.), No. 21, § 5; Pope's Dig., § 6545; A.S.A. 1947, § 76-1305.

14-321-107. Land in different counties — Assessment hearings in respective counties.

In any viaduct improvement district described in § 14-321-101 embracing lands in more than one (1) county, the hearing on the assessment of benefits as they affect the lands in each county shall be had at a place in each county as set forth in the notices of the hearing on the assessment of benefits.

History. Acts 1923 (1st Ex. Sess.), No. 21, § 6; Pope's Dig., § 6546; A.S.A. 1947, § 76-1306.

CHAPTER 322

IMPROVEMENT DISTRICTS FOR CITY STREETS

SECTION.

14-322-101. Chapter supplemental.

14-322-102. Street improvement studies
— Resolution.

14-322-103. Filing of petition requesting
improvement district.

SECTION.

14-322-104. Notice of hearing — Special
meeting.

14-322-105. Hearing — Publication —
Effect of ruling.

14-322-106. Assessments — Filing, no-
tice, and appeal.

SECTION.

14-322-107. Payment generally.

14-322-108. Installment payments.

14-322-109. Use of funds to pay off debt of improvement district.

SECTION.

14-322-110. Fund-raising to finance improvements.

14-322-111. Use of funds.

Effective Dates. Acts 1971, No. 581, § 5: Apr. 6, 1971. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that certain of the laws of this State pertaining to the establishment of street improvement districts of the type governed by the members of the governing body of the municipality involved (specifically, Act 251 of 1967 and Act 252 of 1967) are not in conformity;

that this lack of conformity has resulted in the delay of essential street improvements; and that only by the immediate effectiveness of this Act may these street improvements be completed. Therefore, it is declared, for these reasons, that an emergency exists and this Act being essential for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

14-322-101. Chapter supplemental.

The procedure prescribed herein for the establishment of improvement districts in municipalities of this state shall be supplemental to all other laws of this state with respect to the establishment of municipal improvement districts and shall not be construed to amend, repeal, or otherwise affect those laws.

History. Acts 1967, No. 251, § 9; A.S.A. 1947, § 20-1509.

14-322-102. Street improvement studies — Resolution.

(a) When the governing body of any city or incorporated town in this state shall deem it desirable to enter into a street improvement program in that city or town or any defined portions thereof, the governing body of the city or town may cause studies to be made of the needs for street improvements including grading, paving, curbing, guttering, and drainage and storm sewers in the city or town or the designated areas thereof. The governing body may cause studies to be made of the approximate cost of the improvements and the approximate amount which would need to be assessed against each parcel of property to pay the cost of the proposed improvement.

(b) Upon the completion of the study and determination as provided for in this section, the governing body of the municipality shall adopt a resolution setting out the findings and determinations and shall cause the findings and determinations to be published one (1) time in a newspaper of general circulation in the municipality.

History. Acts 1967, No. 251, § 1;
A.S.A. 1947, § 20-1501.

14-322-103. Filing of petition requesting improvement district.

If, within sixty (60) days after the adoption and publication of the resolution by the governing board of the municipality, petitions are filed with the clerk or recorder of the municipality containing the signatures of a majority in value, number, and area of the real property to be located within the proposed district as shown by the last county assessment in the municipality, or the designated areas requesting that an improvement district be created for the purpose of making the improvements, then the clerk or recorder shall set a date and place for a public hearing on the sufficiency of the petitions.

History. Acts 1967, No. 251, § 2; 1983,
No. 735, § 1; A.S.A. 1947, § 20-1502.

14-322-104. Notice of hearing — Special meeting.

(a) Notice of the public hearing shall be published one (1) time in a newspaper of general circulation in the municipality, at least five (5) days prior to the date fixed for the hearing.

(b) The governing body of the municipality may hold a special meeting for the purpose of conducting the hearing.

History. Acts 1967, No. 251, § 2; 1983,
No. 735, § 1; A.S.A. 1947, § 20-1502.

14-322-105. Hearing — Publication — Effect of ruling.

(a) At the time and place stated in the notice, the governing body of the municipality shall meet and hear all owners of real property in the proposed district who wish to be heard on the question of whether the petitions contain the signatures of a majority in value of the real property owners in the district. It shall make a finding and ruling as to whether the petitions contain the signatures of a majority in value of the real property owners and shall publish the finding one (1) time in a newspaper of general circulation in the municipality.

(b) The finding and ruling of the governing body of the municipality with respect to the sufficiency of the petitions shall be final and conclusive unless questioned by action filed in the chancery court of the county in which the municipality is located within thirty (30) days after the date of publication of the finding.

(1) If the governing body of the municipality determines that the petitions and signatures thereon are sufficient, it shall proceed to establish the proposed district by ordinance. The governing body of the municipality shall, by virtue of their offices, constitute a board of commissioners to make the assessments and carry out the improvements provided for in the ordinance. After the board of commissioners deter-

mines the amount of the initial proposed assessment of benefits, and prior to levying the benefits, the initial petition shall once again be presented to the governing body of the city or town and that governing body shall ascertain whether persons who would be liable for a majority of the assessed benefits proposed to be levied had signed the original petition for formation.

(2) If the municipal governing body determines that petitions and signatures are insufficient, then the assessments may not be levied until enough additional signatures of property owners within the boundaries of the proposed district are obtained on the petition so that persons who would be liable for more than fifty percent (50%) of the assessed benefits have signed the formation petition. When the petition is deemed adequate in that respect, the assessed benefits shall be levied, and the assessment shall continue annually for five (5) years and thereafter reassessments may occur as otherwise provided by law.

History. Acts 1967, No. 251, § 3; 1983, No. 735, § 2; A.S.A. 1947, § 20-1503.

14-322-106. Assessments — Filing, notice, and appeal.

(a) Upon the establishment of the district, the board shall cause an assessment to be made against each lot or parcel of real property in the district based upon the cost of the improvements and the benefits accruing to each lot and parcel of property, with all assessments on property in the district to be ad valorem, according to the value of the benefits and uniform.

(b) A copy of the assessed benefits shall be filed with the city clerk and county clerk.

(c) Notice that the assessed benefits have been filed with the city clerk and county clerk shall be published in a newspaper of general circulation in the municipality.

(d) The assessment of benefits against each parcel of property shall be final and conclusive unless questioned by action filed in the chancery court within thirty (30) days after the date of publication of notice of filing assessed benefits.

History. Acts 1967, No. 251, § 4; A.S.A. 1947, § 20-1504.

14-322-107. Payment generally.

(a) All assessments shall be payable in the manner and within the time prescribed by ordinance of the governing body of the municipality.

(b) Property owners may be given the option to pay the amount of the assessments in one (1) lump sum payment or to pay the amount of the assessments in installments, within the time and at the rate of

interest prescribed by ordinance of the governing body of the municipality.

History. Acts 1967, No. 251, § 5; 1971, No. 581, § 1; A.S.A. 1947, § 20-1505.

14-322-108. Installment payments.

(a) All installments of assessments shall be paid in equal annual amounts as provided by ordinance of the governing body of the municipality.

(b) The ordinance shall provide that the first annual installment shall be collected by the county collector on a date fixed in the ordinance.

(c) The ordinance shall provide that the second and subsequent installments shall be paid at the time provided by law for paying the first installment of general taxes or shall provide for the payment thereof in quarterly installments, at the election of the property owner, along with the quarterly installments of general taxes.

(d) It shall be the duty of the county clerk to extend the installments on the tax books of the county, and the duty of county collector to collect the installments along with general taxes until the entire levy of the assessment is exhausted.

History. Acts 1967, No. 251, § 6; 1971, No. 581, § 2; A.S.A. 1947, § 20-1506.

14-322-109. Use of funds to pay off debt of improvement district.

(a) Any city or town in which an improvement district is established under this chapter may use any funds of the municipality available, including any federal funds, as may be determined by the governing body of the city or town, to make any annual payment of principal and interest or part thereof on bonds, certificates of indebtedness, or other negotiable evidences of debt issued by an improvement district created under this chapter.

(b) However, when the governing body of any such municipality shall pay the annual installment or any portion thereof on bonds issued by the district, the annual installments on assessments upon property in the district shall not be extended and collected for that year or shall be reduced proportionately as the case may be.

(c) Notice of the amount assessments shall be reduced shall be filed with the county clerk before November 1 of the year preceding the year assessments are collected.

History. Acts 1967, No. 251, § 6; 1971, No. 581, § 2; A.S.A. 1947, § 20-1506.

14-322-110. Fund-raising to finance improvements.

The board of commissioners of any improvement district established under the provisions of this chapter are authorized to issue bonds, certificates of indebtedness, or other negotiable evidences of debt to secure funds to finance the proposed improvements. All unpaid assessments upon real property in the district may be pledged to secure the bonds or other negotiable evidences of debt.

History. Acts 1967, No. 251, § 7;
A.S.A. 1947, § 20-1507.

14-322-111. Use of funds.

All funds derived from assessments upon real property by a district established under the provisions of this chapter shall be funds of the district and not funds of the municipality. They shall at all times be kept separate and apart from funds of the municipality and shall be used solely for paying the cost of the contemplated improvements. However, such funds may be used to reimburse the municipality for expenses incurred in making the study and survey provided for in § 14-322-102.

History. Acts 1967, No. 251, § 8;
A.S.A. 1947, § 20-1508.

CHAPTERS 323-332

[Reserved]

***SUBTITLE 20. PUBLIC TRANSIT SYSTEMS
GENERALLY*****CHAPTER 333****GENERAL PROVISIONS****SECTION.**

14-333-101. Rights-of-way for railroads.

Effective Dates. Acts 1883, No. 47,
§ 3: effective on passage.

14-333-101. Rights-of-way for railroads.

(a) The city council of any city of the first or second class and the town council of any incorporated town shall have power to grant to any railroad company a right-of-way through the streets of the city or town, with the right to establish and maintain depots and other necessary improvements in connection therewith.

(b) If any property is damaged, the railroad company shall be liable for the damage, which shall be assessed in the manner provided by law for assessing damages for the appropriation of the right-of-way through lands.

History. Acts 1883, No. 47, § 2, p. 69; 1899, No. 8, § 1, p. 6; C. & M. Dig., § 3983; Pope's Dig., § 4985; A.S.A. 1947, § 73-508.

Publisher's Notes. As to validation of previous grants, see Acts 1883, No. 47, § 1.

CASE NOTES**ANALYSIS**

Landowners' rights.

— Damages.

Use as street.

Landowners' Rights.

City could not grant right-of-way in street, the fee to which is in adjoining landowners; however, adjoining landowners could lose their rights by laches. *Reichert v. St. Louis & S.F. Ry.*, 51 Ark. 491, 11 S.W. 696 (1889).

— Damages.

City's consent to use of street as railroad right-of-way cannot impair adjoining landowner's right to damages. *Hot*

Springs Ry. v. Williamson, 45 Ark. 429 (1885), *aff'd*, 136 U.S. 121, 10 S. Ct. 955, 34 L. Ed. 355 (1890).

Use as Street.

Where a municipal corporation grants to a railroad company a right-of-way along a street without abandoning its use as a street, the public has a right to use the street as well as the railroad company, and the rights of each in the street must be exercised with due regard to the rights of the other. *St. Louis, I.M. & S. Ry. v. Neely*, 63 Ark. 636, 40 S.W. 130, 37 L.R.A. 616 (1897).

Cited: *Hughes v. Arkansas & O. Ry.*, 74 Ark. 194, 85 S.W. 773 (1905).

CHAPTER 334**PUBLIC TRANSIT SYSTEMS GENERALLY****SECTION.**

14-334-101. Title.

14-334-102. Definitions.

14-334-103. Creation of authorities.

14-334-104. Authority as public corporation.

14-334-105. System authorized.

14-334-106. Systems declared public properties.

14-334-107. Board of authority.

14-334-108. Powers generally.

14-334-109. Issuance of revenue bonds.

SECTION.

14-334-110. Security for bonds.

14-334-111. Refunding bond issue.

14-334-112. Investment of revenue bonds.

14-334-113. Bonds — Tax exemption.

14-334-114. Public and private contributions permitted.

14-334-115. Accounting for receipts and expenditures.

14-334-116. Workers' compensation for employees.

Cross References. Local government reserve funds, § 14-73-101 et seq.

Effective Dates. Acts 1981, No. 424, § 20: Mar. 11, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is currently no specific authority for the creation of public transit authorities through cooperative efforts of cities and counties, that it is essential to the well-being of the citizens of this State that public transit systems be made available to the individuals residing in the State, and that the immediate effectiveness of this Act is the only means by which this public purpose can be expeditiously accomplished; therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preserva-

tion of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 711, § 4: Mar. 24, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 424 of 1981 went into effect on March 11, 1981; that this Act is immediately necessary to make technical corrections in Act 424 of 1981; and this Act should go into effect immediately in order to make such corrections. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Measure and elements of damages or compensation for condemnation of

public transportation system. 35 ALR 4th 1263.

14-334-101. Title.

This chapter may be cited as the "Public Transit System Act."

History. Acts 1981, No. 424, § 1; A.S.A. 1947, § 20-2201.

14-334-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Authority" means the public corporation created pursuant to § 14-334-103;

(2) "Capital costs" means the fixed expenses associated with initiating transit operations including, but not limited to, the purchase of land, vehicles, facilities, and equipment;

(3) "Chairman" or "chairman of the board" or "chairman of the board of the authority" means the presiding officer of the authority, as selected pursuant to § 14-334-107;

(4) "Public transit system" means a transit system owned and operated by any municipality, county, regional authority, state, or other governmental agency including school districts, and any transit system created or licensed by a government agency or managed by a private management firm under contract to the government agency owner. Excluded from the jurisdiction of any public transit system created by this chapter is any intercity bus transportation system sub-

ject to the regulations of the Arkansas Transportation Commission and the Interstate Commerce Commission;

(5) "Transit system" means the facilities, equipment, personnel, and procedures needed to provide and maintain public transportation services to the public;

(6) "Public transportation" means the transportation of persons within and through the authority;

(7) "Improvement district" means a district as authorized pursuant to § 14-334-108(8) and for the purpose of upgrading and otherwise improving public transit, and their creation and operation shall, to the extent consistent with this chapter, be in accordance with the procedures established by law for the creation and operation of municipal improvement districts.

History. Acts 1981, No. 424, § 2; 1981, No. 711, § 1; A.S.A. 1947, § 20-2202.

14-334-103. Creation of authorities.

(a) Any combination of two (2) or more entities as defined in § 14-334-102(4), or portions of those entities, are authorized to create and establish one (1) or more authorities for the purpose of acquiring, owning, equipping, leasing, maintaining, licensing, and operating a public transit system.

(b) No entity shall participate in such an authority unless and until its governing body so provides and enters into an agreement with the other participating entities. This agreement shall establish the terms and conditions for the operation of the authority within the limitations provided in this chapter and such other laws of the State of Arkansas which may be applicable.

(c) To the extent that it is consistent with this chapter, the agreement shall specify the information provided for in § 25-20-104(c) of the Interlocal Cooperation Act, § 25-20-101 et seq.

History. Acts 1981, No. 424, § 3; A.S.A. 1947, § 20-2203.

14-334-104. Authority as public corporation.

(a) Each authority, when created, and the members thereof, shall constitute a public corporation and, as such, shall have perpetual succession, may contract and be contracted with, may sue and be sued, and may have and use a common seal.

(b) The exercise of the powers and performance of duties provided for in this chapter by each authority are declared to be public and governmental functions, exercised for a public purpose and matters of public necessity, conferring upon each authority governmental immunity from suit in tort.

History. Acts 1981, No. 424, § 4;
A.S.A. 1947, § 20-2204.

14-334-105. System authorized.

Each authority is authorized and empowered to acquire, own, equip, construct, lease, maintain, license, and regulate public and private public transportation and otherwise maintain a public transit system so located and operated to best serve the region in which it is located.

History. Acts 1981, No. 424, § 5;
A.S.A. 1947, § 20-2205.

14-334-106. Systems declared public properties.

(a) All transit systems formed under this chapter, and all the properties thereof, are declared to be public properties used exclusively for public purposes.

(b) The legislative intent of this section is that these transit systems, and all properties thereof, shall be exempt from:

(1) Ad valorem taxes under and pursuant to the provisions of Arkansas Constitution, Article 16, § 5; and

(2) Motor vehicle registration fees levied by the state. However, a one dollar (\$1.00) annual registration fee shall be charged on all vehicles used for public transit purposes by an authority.

History. Acts 1981, No. 424, § 15;
A.S.A. 1947, § 20-2215.

14-334-107. Board of authority.

(a) Subject to such limitations as may be contained in the agreement provided for in § 14-334-103, the management and control of each authority, its property, operations, business, and affairs shall be governed by a board comprised of at least:

(1) A representative of the county judge of each participating county; and

(2) A representative for one (1) mayor from each participating county selected by the mayors within the participating county.

(b) In the event an authority is established by a single county, representatives of three (3) mayors shall be selected to serve with the representative of the county judge and one (1) citizen representative who holds no public office, who shall be selected by the county judge and mayors serving as described in this section, to form a board having a minimum of five (5) members.

(c)(1) The members of the board shall serve as such throughout their terms in office.

(2) If any member of the board ceases, for any reason, to be a member, that member shall be replaced by the elected official succeeding

the member or as may be provided further in the bylaws created under § 14-334-108(1).

(d) The members of the board shall be solely responsible for selecting the chairman of the board.

(e) All members of the board of each authority shall be qualified electors within the judicial boundaries of the authority which the members represent. They do not necessarily have to be bona fide residents of the area served by the authority.

(f)(1) No member of the board of an authority shall receive any compensation, whether in form of salary, per diem allowance, or otherwise, for or in connection with his services as such a member.

(2) Each member shall, however, be entitled to reimbursement by the authority for any necessary expenditures in connection with the performance of his general duties as a member.

History. Acts 1981, No. 424, §§ 6-8;
A.S.A. 1947, §§ 20-2206 — 20-2208.

14-334-108. Powers generally.

Each authority is given power and authority as follows:

(1) To make and adopt all necessary bylaws, rules, and regulations for its organization and operations not inconsistent with law;

(2) To elect officers, to appoint committees, and to employ and fix the compensation for personnel necessary for its operation;

(3) To enter into contracts with any person, governmental department, firm, or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of acquiring, owning, equipping, leasing, licensing, constructing, maintaining, improving, extending, financing, operating, and governing a surface public transit system covering all publicly and privately owned public transportation service provided within its boundaries to best serve the region in which it is located;

(4) To delegate any authority given to it by law to any of its officers, committees, agents, or employees;

(5) To apply for, receive, and use grants-in-aid, appropriated funds, donations, and contributions from any source including, but not limited to, the federal government and any agency thereof, and the Arkansas State Highway and Transportation Department, the State of Arkansas and any agency thereof, and to accept and use bequests, devises, gifts, and donations from any person, firm, or corporation;

(6) To acquire lands and hold title thereto in its own name;

(7) To acquire, own, hold, lease as lessor or as lessee, sell, encumber, dispose of, or otherwise deal in and with any facilities or real, personal, or mixed property, wherever located;

(8)(A) To constitute the authority or a committee thereof as improvement district commissioners and to create and operate an improvement district, composed of the area encompassed within the

jurisdictions of the participating governing bodies, upon the petition of persons claiming to be two-thirds ($\frac{2}{3}$) in value of the owners of real property in the area, as shown by the last county assessment.

(B) The improvement district shall be for the purpose of providing basic revenues to operate the authority or in conjunction with the payment of bond principal and interest and any other expenses incurred in the issuance of transit bonds as provided in this chapter.

(C) The creation and operation of such an improvement district shall, to the extent consistent with this chapter, be in accordance with the procedures established by the laws of this state for the creation and operation of municipal improvement districts;

(9) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its properties and facilities in connection with the issuance of mortgage bonds;

(10) To raise funds by the issuance and sale of revenue bonds in the manner and according to the terms set forth in this chapter;

(11) To expend its funds in the execution of the powers and authorities given in this section and to invest and reinvest any of its funds pending need therefor;

(12) To apply for, receive, and use loans, grants, donations, technical assistance, and contributions from any other regional or area transit authorities or commissions that may be established and any agency of the federal government or the State of Arkansas;

(13) To enforce all rules, regulations, and statutes relating to the transit system;

(14) To plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, and regulate the system and auxiliary services and facilities including, but not limited to, parking facilities or decks, and to protect and police the properties of the authority, in cooperation with the law enforcement agencies and officers having jurisdiction in the area where the facilities of the authority are located; and

(15) To take such other action, not inconsistent with law, as may be necessary or desirable to carry out the powers and authorities conferred by this section and the intent and purposes of it.

History. Acts 1981, No. 424, § 9;
A.S.A. 1947, § 20-2209.

14-334-109. Issuance of revenue bonds.

(a)(1) The authority is authorized and empowered to issue transit revenue bonds from time to time in principal amounts sufficient to pay capital costs of the system.

(2) There may be more than one (1) issue of bonds, or there may be one (1) issue sold and delivered in series.

(3) In all instances, priority between and among issues and successive issues shall be controlled by the authorizing resolution or by the trust indenture securing the bonds.

(4) Transit revenue bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to the provisions of this chapter regarding registration.

(b)(1) Transit revenue bonds shall be authorized by resolution of the authority, referred to as the "authorization resolution."

(2)(A) The bonds may be coupon bonds, payable to bearer, or may be registrable as to both principal and interest without coupons and may be made exchangeable for bonds of another denomination. The bonds of another denomination may in turn be coupon bonds payable to bearer, or bonds registrable as to principal only or as to principal and interest with coupons, or bonds registrable as to principal and interest without coupons.

(B) As the authority shall determine, the bonds may:

- (i) Be in such form and denominations;
- (ii) Have such date or dates;
- (iii) Mature at such time or times;
- (iv) Bear interest payable at such time or times and at such rate or rates;

(v) Be payable at such places within or without the State of Arkansas;

(vi) Be subject to such terms of redemption in advance of maturity at such prices, including such premiums; and

(vii) Contain such terms and provisions.

(3) The authorizing resolution may contain any other terms, covenants, and conditions that are deemed desirable by the authority, including, without limitation, those pertaining to:

- (A) The custody, investment, and application of bond proceeds;
- (B) The maintenance of various funds reserves;
- (C) The nature and extent of the security;
- (D) The rights, duties, and obligations of the authority; and
- (E) The rights, duties, and obligations of the holders and registered owners of the bonds.

(c)(1) The authorizing resolution may provide for the execution by the authority with a bank or trust company, within or without the State of Arkansas, of a trust indenture, referred to as the "trust indenture."

(2) The trust indenture may control the priority between and among successive issues and series and may contain any other terms, covenants, and conditions that are deemed desirable including, without limitation, those pertaining to:

- (A) The custody and application of the proceeds of bonds;
- (B) The collection and disposition of transit system revenues;
- (C) The maintenance of various funds and reserves;
- (D) The nature and extent of the security;

(E) The rights, duties, and obligations of the authority and the trustee for the holders or registered owners of the bonds; and

(F) The rights of the holders or registered owners of the bonds.

(d)(1)(A) Bonds issued under the authority of this chapter may be sold at public or private sale.

(B) If sold at public sale, the bonds shall be sold on sealed bids, and notice of the sale shall be published once in a newspaper having a general circulation throughout the State of Arkansas at least ten (10) days prior to the date of sale.

(2) In either case, the bonds may be sold at a price the authority may accept, including sale at a discount.

(3) The award at any public sale, if made, shall be to the bidder whose bid results in the lowest net interest cost.

(e)(1)(A)(i) Bonds shall be executed by the manual or facsimile signature of the chairman of the board of the authority and by the manual signature of the secretary of the authority.

(ii) Coupons attached to the bonds shall be executed by the facsimile signature of the chairman of the board of the authority.

(B) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such an officer before the delivery date of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

(2) The authority shall adopt and use a seal in the execution and issuance of bonds, and each bond shall be sealed with the seal of the authority.

History. Acts 1981, No. 424, § 10; 1981, No. 711, § 2; A.S.A. 1947, § 20-2210.

14-334-110. Security for bonds.

(a) The principal of and interest on all bonds issued under the authority of this chapter may be secured by a pledge of, and shall be payable from, transit system revenues or liens on real and personal property of the authority.

(b)(1) Each resolution authorizing the issuance of bonds, and this chapter, shall constitute a contract by and between the authority and the holders and registered owners of all bonds issued under the authority of this chapter.

(2) The contract and all covenants, agreements, and obligations therein, including, without limitation, an obligation on the part of the authority to properly maintain the transit system and to charge and collect transit system revenues in required amounts, all as specified in detail in the authorizing resolution, the trust indenture, and in this chapter, shall be promptly performed in strict accordance with the terms and provisions of the contract.

(3) The contract and all rights of the trustee and holders and registered owners of the bonds and the obligations of the authority may be

enforced by mandamus or any other appropriate proceeding at law or in equity.

History. Acts 1981, No. 424, § 11;
A.S.A. 1947, § 20-2211.

14-334-111. Refunding bond issue.

(a)(1) Transit revenue bonds may be issued for the purpose of refunding any bonds issued under the authority of this chapter.

(2) Refunding bonds may be combined into a single issue with revenue bonds issued for the purpose of completing, reconstructing, or expanding the transit system.

(b)(1) Refunding bonds may either be sold or delivered in exchange for the bonds being refunded.

(2) If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement thereof, as shall be specified by the authority in the trust indenture securing the refunding bonds.

(c) The resolution authorizing and the trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same priority of lien on transit system revenues pledged for their payment as was enjoyed by the bonds refunded thereby.

(d) Refunding bonds shall be sold and secured in accordance with the provisions of this chapter pertaining to the sale and security of revenue bonds.

History. Acts 1981, No. 424, § 12;
A.S.A. 1947, § 20-2212.

14-334-112. Investment of revenue bonds.

(a) Revenue bonds issued under the authority of this chapter are made securities in which all insurance companies, trust companies, banks, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

(b) These bonds are made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of this state for any purpose for which the deposit of bonds or obligations of this state is authorized by law.

(c) Any municipality or county, or any board, commission, or other authority duly established by any municipality or county, or the board of trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly of the State of Arkansas, may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this chapter.

(d) Bonds issued under the authority of this chapter shall be eligible to secure the deposit of public funds.

History. Acts 1981, No. 424, § 13;
A.S.A. 1947, § 20-2213.

14-334-113. Bonds — Tax exemption.

The principal of and interest on bonds issued under the authority of this chapter shall be exempt from all state, county, and municipal taxes. This exemption shall include income, inheritance, and estate taxes.

History. Acts 1981, No. 424, § 14;
A.S.A. 1947, § 20-2214.

14-334-114. Public and private contributions permitted.

(a) Contributions may be made to authorities from time to time by the various public and private entities and persons, firms, or corporations that shall desire to do so.

(b)(1) In order to afford maximum opportunities for contributions, the agreement provided for under § 14-334-103 may:

(A) Be treated as a cooperative agreement under the provisions of the Interlocal Cooperation Act, § 25-20-101 et seq.;

(B) Contain language enabling the agreement to be treated as a formal compact under §§ 14-165-201 — 14-165-204, in which case the authority shall hold title to property in its powers and capacity as a public corporation rather than as a commission-trustee as provided in §§ 14-165-201 — 14-165-204; or

(C) Be treated as a less formal arrangement for the cooperative use of industrial development bond funds.

(2) All these treatments shall be to the end that the counties and municipalities may contribute to the authority funds derived from:

(A) General obligation bonds under Arkansas Constitution Amendments 13 and 49;

(B) Revenue bonds under § 14-164-201 et seq.;

(C) Other available sources; and

(D) Funds derived from a combination of sources.

(c)(1) The entities defined in § 14-334-102(4) are authorized and empowered to contribute to the cost of acquiring, constructing, equipping, maintaining, and operating a transit system.

(2) These entities are authorized and empowered to transfer and convey to the authorities property of any kind acquired by the entities.

History. Acts 1981, No. 424, §§ 16, 17;
A.S.A. 1947, §§ 20-2216, 20-2217.

Publisher's Notes. Pursuant to Arkansas Constitution, Amendment 62, Section 11, the provisions of Arkansas Con-

stitution, Amendments 13 and 49 are repealed insofar as they are inconsistent with the provisions of Arkansas Constitution, Amendment 62.

14-334-115. Accounting for receipts and expenditures.

(a) All funds received by an authority shall be deposited in such banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct.

(b)(1)(A) Each authority shall keep a strict account of all its receipts and expenditures and shall, each quarter, make a quarterly report to the counties and municipalities which have made contributions.

(B) The report shall contain an itemized account of its receipts and disbursements during the preceding quarter.

(2) The report shall be made within sixty (60) days after the termination of the quarter.

(c) Within sixty (60) days after the end of each fiscal year, each authority shall cause an annual audit to be made by an independent certified public accountant. It shall file a copy of the resulting audit report, containing an itemized statement of its receipts and disbursements for the preceding year, with each of the governing bodies participating in the authority.

(d) The books, records, and accounts of each authority shall be subject to audit and examination by any proper public official or body in the manner provided by law.

(e) The agreement provided for in § 14-334-103 may also provide for each authority to furnish the participating governing bodies copies of its annual budget for examination and approval.

History. Acts 1981, No. 424, § 16;
A.S.A. 1947, § 20-2216.

14-334-116. Workers' compensation for employees.

All employees of each authority who are eligible shall be deemed to be within the workers' compensation laws of Arkansas, and premiums on their compensation shall be paid by the authority as required by law.

History. Acts 1981, No. 424, § 18;
A.S.A. 1947, § 20-2218.

CHAPTER 335**ELECTRIC AND STREET RAILROADS****SECTION.**

14-335-101. Authority to construct, operate, and maintain generally.

14-335-102. Construction and maintenance of overhead wires.

14-335-103. Duty to pave between rails in first-class cities.

SECTION.

14-335-104. Duty to heat streetcars in first-class cities.

14-335-105. Duty to stop at railroad crossings.

Cross References. Authority over railroad crossings, § 23-12-301.

Frequency of service, § 23-12-104.

Effective Dates. Acts 1905, No. 331, § 3: effective on passage.

Acts 1915, No. 259, § 5: approved Mar. 25, 1915. Emergency declared.

Acts 1923, No. 680, § 6: approved Mar. 26, 1923. Emergency clause provided: "This act being necessary for the immediate preservation of the public health and safety, shall take effect and be in force from and after its passage."

14-335-101. Authority to construct, operate, and maintain generally.

(a)(1) The county court of any county in this state may grant to persons or corporations authority for the construction, maintenance, and operation, for a period of not exceeding fifty (50) years, of electric railroads or railways upon, over, along, and across any public road or highway in the county over which the court has jurisdiction.

(2) In granting this authority, the court may prescribe the terms and conditions on which these railroads or railways and their appurtenances shall be constructed, maintained, and operated upon, over, along, and across the roads or highways, and to grade an elevation at which they shall be maintained and operated.

(3) No such authority shall be granted except upon the filing with the court of:

(A) A petition setting forth the rights and privileges applied for, signed and verified by the persons or corporation desiring them; and

(B) The consents in writing of at least a majority of the owners in frontage of the lands abutting on the portions of the roads and highways to be occupied by the railroads or railways specified in the petition.

(b) In case any electric railroad or railway shall be located in part on a private right-of-way, then the owner of the electrical road or railway shall have the right to construct, maintain, and operate the electrical road or railway across any county road or highway which intersects the routes of the railway. However, the crossing shall be constructed and maintained at such grade and elevation as shall be prescribed by the county court having jurisdiction over the road or highway and in such manner as to cause no unnecessary damage.

(c)(1) The owner of any electric railroad or railway occupying any county road or highway, or any portion thereof, as permitted by this section, shall keep the portion of the public road or highway occupied by its tracks and roadbed in good repair and condition.

(2) The county courts are directed to enforce the provisions of this subsection by proper proceedings with respect to all public roads and highways under their respective jurisdictions.

(d) Any authority previously granted by a county court or board of supervisors of any county in this state to construct, operate, and maintain electric railroads or railways upon, over, along, or across any

county road or highway under the jurisdiction of the court or board is confirmed and declared to be valid and effectual according to its terms.

History. Acts 1915, No. 259, §§ 1-4; C. §§ 6983-6986; A.S.A. 1947, §§ 73-1601 — & M. Dig., §§ 5255-5258; Pope's Dig., 73-1604.

CASE NOTES

Cited: Missouri P.R.R. v. Stroupe, 237 Ark. 464, 373 S.W.2d 709 (1963).

14-335-102. Construction and maintenance of overhead wires.

(a) All street railway companies or corporations operating cars by electricity or by overhead wires shall construct and maintain their wires at a height of not less than twenty-two feet (22') above the top of the rail or the railroad track crossed by the street railway company.

(b) The wires of the street railway company shall be guarded or provided with fenders or guard wires to prevent the wires from coming in contact with the cars, track, or telegraph line along the track of the railroad company.

History. Acts 1905, No. 179, § 1, p. Pope's Dig., § 11067; A.S.A. 1947, 465; C. & M. Dig., §§ 1762, 10240d; § 73-1610.

14-335-103. Duty to pave between rails in first-class cities.

(a)(1)(A) It shall be the duty of every person, firm, or corporation operating any street railway on, along, or across any street or avenue in any city of the first class in the State of Arkansas, under and by virtue of any indeterminate permit issued by the Arkansas Transportation Commission, to pave between its rails and to the end of its ties whenever the portions of the streets or avenues adjacent to the portion of the street occupied by its ties and rail shall have been paved by the city, the county, or an improvement district.

(B) The space between the rails and to the end of the ties shall be paved by the person, firm, or corporation operating under the indeterminate permit, with the same class and character of material used by the city, county, or improvement district in paving the other portion of the street or avenue adjacent thereto.

(2) The work shall be done by the person, firm, or corporation holding the indeterminate permit in a good and workmanlike manner. The pavement so laid by the person, firm, or corporation holding the indeterminate permit shall be maintained by the person, firm, or corporation in as good condition as the remainder of the pavement laid on the street or avenue.

(3)(A) In case the person, firm, or corporation operating the street railway under an indeterminate permit shall deem it advisable to use a different character of material for paving that portion of any street or avenue between its rails and to the end of its ties than that

used on the remainder of the street, it may present a written petition to the city council or commission of the city asking permission to use some other character of material.

(B) The council or commission is authorized to grant the petition either by ordinance or resolution, if, in the judgment of the commission or council, the material set forth in the petition is of equal grade and durability to that used on the balance of the street or avenue.

(b) The tracks of any street railway and the paving provided for in subsection (a) of this section shall be laid and maintained to the grade established by the city.

(c) The circuit court of the county in which the city is located is given jurisdiction to enforce compliance with the provisions of subsection (a) of this section by mandamus upon the complaint of the city.

(d)(1)(A) Whenever the city, the county, or an improvement district shall have adopted final plans for the paving of any street or avenue occupied by railway track and shall have finally determined the material to be used, it may cause to be served upon the person, firm, or corporation operating the street railway a notice, in writing, stating the character of material to be used upon the balance of the street and directing the person, firm, or corporation to proceed with the work of paving between the rails to the end of its ties.

(B) In case the person, firm, or corporation shall fail to start paving within thirty (30) days, or to complete paving within a reasonable time, then the city, county, or improvement district, as the case may be, may cause the tracks of the street railway to be brought to grade and may construct the pavement between the rails and to the end of the ties.

(2) The amount expended by the city, county, or improvement district in paving the space between the rails and to the end of the ties, together with ten percent (10%) interest on the amount of the expenditure from the date thereof, may be recovered by it from the person, firm, or corporation holding an indeterminate permit in an ordinary action at law.

(3) The remedies provided for in this subsection are cumulative and are in addition to the remedy of mandamus provided for in subsection (c) of this section.

(e) The term "pavement" as used in this section shall include a proper foundation and all excavation, drainage, and other work necessary to properly pave the space between the rails and to the end of the ties.

(f) The provisions of this section shall not apply to Miller County.

History. Acts 1923, No. 680, §§ 1-5;
Pope's Dig., §§ 1208-1212; A.S.A. 1947,
§§ 73-1605 — 73-1609.

CASE NOTES

Constitutionality.

This section is constitutional. *Fort Smith Light & Traction Co. v. Board of* Imp., 169 Ark. 690, 276 S.W. 1012 (1925), aff'd, 274 U.S. 387, 47 S. Ct. 595, 71 L. Ed. 1112 (1927).

14-335-104. Duty to heat streetcars in first-class cities.

(a) All persons, companies, or corporations operating any streetcar line for the transportation of passengers in any city of the first class in this state shall be required to keep every streetcar run by them for the transportation of passengers heated during the fall, winter, and spring seasons of each year so as to make them comfortable for all passengers on the cars.

(b) All persons, companies, or corporations failing to keep every streetcar operated by them heated as provided in this section shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00). Each day each car is not heated as provided in this section shall be counted as a separate offense within the provisions of this section.

History. Acts 1905, No. 331, §§ 1, 2, p. 787; C. & M. Dig., §§ 966, 967; Pope's Dig., §§ 1170, 1171; A.S.A. 1947, §§ 73-1612, 73-1613.

14-335-105. Duty to stop at railroad crossings.

(a) It shall be the duty of every street railway company or corporation operating a street railway crossing the tracks of a railroad company to bring its cars to a full stop at least ten feet (10') and not more than twenty feet (20') before reaching the tracks of the railroad company.

(b) It shall be the duty of the conductor, or some other employee of the street railway company, to go forward to the tracks of the railroad company to find out whether a train is approaching the crossing.

History. Acts 1905, No. 179, § 2, p. 465; C. & M. Dig., §§ 1763, 10240e; Pope's Dig., § 11068; A.S.A. 1947, § 73-1611. **Cross References.** Stop for emergency vehicles, § 27-51-901.

CHAPTERS 336-345

[Reserved]

***SUBTITLE 21. PUBLIC TRANSIT IMPROVEMENT
DISTRICTS*****CHAPTERS 346-355**

[Reserved]

SUBTITLE 22. AIRPORT FACILITIES GENERALLY**CHAPTER 356****GENERAL PROVISIONS****SECTION.**

14-356-101. Display of air markers.

Effective Dates. Acts 1947, No. 44, § 2: approved Feb. 7, 1947. Emergency clause provided: "Whereas there are many municipal corporations in the State of Arkansas without signs displaying the names thereof; and whereas the displaying of such signs will materially aid in

the guidance of aircraft in flight and will aid in the protection of aircraft travel; and this Act being necessary for the public peace, health and safety of the State of Arkansas, an emergency is hereby declared, and this Act shall be in full force and effect from and after its passage."

14-356-101. Display of air markers.

(a) All municipal corporations with a population, according to the last federal census, of one thousand (1,000) people or more, shall paint or prepare a conspicuous sign displaying the name of the municipality so as to be visible to persons traveling by air.

(b) The sign shall be for the guidance and protection of aircraft in flight.

History. Acts 1947, No. 44, § 1; A.S.A. 1947, § 74-124.

CHAPTER 357

COUNTY AIRPORT COMMISSIONS

SECTION.

14-357-101. Creation.

14-357-102. Appointment of commissioners.

14-357-103. Removal of commissioners.

14-357-104. Compensation of commissioners.

SECTION.

14-357-105. Authority of commissioners.

14-357-106. Rules and regulations.

14-357-107. Use of operational revenue.

14-357-108. Records and reports.

RESEARCH REFERENCES

ALR. Zoning regulations limiting use of property near airport as taking of property. 18 ALR 4th 542.

Operations or flight of aircraft as constituting taking or damaging of property. 22 ALR 4th 863.

Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR 4th 674.

14-357-101. Creation.

(a) Any county owning and operating an airport may, by appropriate action of the county court, create a commission for the purpose of operating and managing the airport and its related properties and facilities.

(b) The county court of any county desiring to avail itself of the benefits of this chapter shall enter an order creating an airport commission to be composed of seven (7) citizens who are qualified electors of the county.

History. Acts 1965, No. 384, §§ 1, 2;
A.S.A. 1947, §§ 74-701, 74-702.

14-357-102. Appointment of commissioners.

(a) The first commissioners shall be appointed by the county court in the order creating the airport commission.

(b) Of the commissioners first appointed, one (1) shall serve for a term of one (1) year, one (1) shall serve for a term of two (2) years, one (1) shall serve for a term of three (3) years, one (1) shall serve for a term of four (4) years, one (1) shall serve for a term of five (5) years, one (1) shall serve for a term of six (6) years, and one (1) shall serve for a term of seven (7) years, to be determined by lot at the first meeting of the commission.

(c) Upon the expiration of the respective terms, successor commissioners shall be appointed by the remaining commissioners, subject to the approval of the county court, for a term of seven (7) years.

(d) In the event of a vacancy occurring on the commission, the remaining commissioners shall, subject to the approval of the county court, appoint a commissioner to serve the unexpired term.

(e) The commissioner shall file the oath required of public officials by law in the State of Arkansas.

History. Acts 1965, No. 384, § 3;
A.S.A. 1947, § 74-703.

14-357-103. Removal of commissioners.

Any commissioner appointed under the provisions of this chapter may be removed only for cause by the county court after a hearing in which the commissioner proposed to be removed is given reasonable notice and an opportunity to appear.

History. Acts 1965, No. 384, § 4;
A.S.A. 1947, § 74-704.

14-357-104. Compensation of commissioners.

The county court shall have authority to fix and prescribe the compensation, if any, to be paid to the commissioners.

History. Acts 1965, No. 384, § 3;
A.S.A. 1947, § 74-703.

14-357-105. Authority of commissioners.

(a)(1) The commissioners appointed under this chapter shall have full and complete authority to manage, operate, improve, extend, and maintain the airport and its related properties and facilities.

(2) The commissioners shall have full and complete charge of the airport and its related properties and facilities including, without limitation, the right to:

(A) Establish charges and fees for the services and facilities of the airport and to collect, handle, and disburse all revenues derived therefrom;

(B) Contract; and

(C) Employ and remove any and all assistants and employees of whatsoever nature, kind, or character and to fix, regulate, and pay their compensation.

(b) It is the intention of this chapter to vest in the commissioners unlimited authority to operate, manage, maintain, improve, and extend the county-owned airport and to have full and complete charge of it. However, the commissioners shall not have authority or power to sell, mortgage, or encumber the airport and its related properties and facilities.

History. Acts 1965, No. 384, § 5;
A.S.A. 1947, § 74-705.

14-357-106. Rules and regulations.

(a)(1) The commissioners shall adopt such rules and regulations as they deem necessary and expedient for the proper operation and management of the airport and its related properties and facilities.

(2) The commissioners shall have authority to alter, change, or amend these rules and regulations at their discretion.

(b)(1) The commissioners shall comply with, or cause to be complied with, all civil air regulations of the federal and state government as to air worthiness, certification, and operation of aircraft.

(2) The commissioners shall protect all the aerial approaches to the airport insofar as it comes within their jurisdiction to do so.

History. Acts 1965, No. 384, § 7;
A.S.A. 1947, § 74-707.

14-357-107. Use of operational revenue.

All revenue derived from the operation of the airport, after paying the operating expenses and maintenance, may be set aside and used for additional improvements on the airport or for any lawful purpose.

History. Acts 1965, No. 384, § 6;
A.S.A. 1947, § 74-706.

14-357-108. Records and reports.

(a)(1) The commissioners shall keep a record of all revenues and expenditures of the airport and its related properties and facilities. They shall prepare and file an annual report of the financial affairs and conditions of the airport and its related properties and facilities.

(2) The report shall be filed in the office of the clerk of the county court and shall be subject to inspection by any interested person.

(b) The commissioners shall also furnish such other and further reports, data, and information as shall be requested by the county court.

History. Acts 1965, No. 384, § 8;
A.S.A. 1947, § 74-708.

CHAPTER 358

COUNTY AIRPORTS

SECTION.

14-358-101. Authorization.

14-358-102. Acquisition of property.

Effective Dates. Acts 1963, No. 188, § 4: Mar. 7, 1963. Emergency clause provided: "It is hereby found and determined by the general assembly that the rapid development and expansion of air transportation in the State is leading to the need for more and better airport facilities in the State and that such facilities are

needed immediately to accommodate such expansion and to make flying safe for the public. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

RESEARCH REFERENCES

ALR. Zoning regulations limiting use of property near airport as taking of property. 18 ALR 4th 542.

Airport operations or flight of aircraft as constituting taking or damaging of property. 22 ALR 4th 863.

Operations or flight of aircraft as con-

stituting taking or damaging of property. 22 ALR 4th 863.

Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR 4th 674.

14-358-101. Authorization.

Any county in this state may acquire, own, operate, and maintain an airport or flying field in that county and may make, build, and construct all improvements at the airport or flying field as may be deemed necessary for the proper operation thereof.

History. Acts 1963, No. 188, § 1; A.S.A. 1947, § 74-209.

14-358-102. Acquisition of property.

(a) Counties are authorized to acquire lands for airports or flying fields by gift, purchase, or by the exercise of the power of eminent domain, which is granted to counties for this purpose.

(b) The power of eminent domain granted to counties by this section shall be exercised in the same manner and procedure as is prescribed for the exercise of this power by railroads.

History. Acts 1963, No. 188, §§ 2, 3; A.S.A. 1947, §§ 74-210, 74-211.

Cross References. Eminent domain power of railroads, § 18-15-1201 et seq.

CHAPTER 359

MUNICIPAL AIRPORT COMMISSIONS

SECTION.

- 14-359-101. Title.
- 14-359-102. Applicability.
- 14-359-103. Authority to create.
- 14-359-104. Creation of commission.
- 14-359-105. Appointment of commissioners.
- 14-359-106. Removal of commissioners.
- 14-359-107. Salary of commissioners.
- 14-359-108. Meetings of commission.
- 14-359-109. Authority of commissioners.
- 14-359-110. Vesting of authority in commissioners.

SECTION.

- 14-359-111. Financing of improvements.
- 14-359-112. Eminent domain.
- 14-359-113. Zoning regulations.
- 14-359-114. Rules and regulations.
- 14-359-115. Additional powers of commissioners.
- 14-359-116. Estimate of funds required.
- 14-359-117. Use of operational revenue.
- 14-359-118. Records and reports.
- 14-359-119. Civil service not applicable.
- 14-359-120. Pension and retirement plans.

Effective Dates. Acts 1969, No. 308, § 5: Mar. 21, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain cities of the second class in this State own and operate airports, or desire to own and operate airports, for the convenience of the public and to promote air commerce, and that the immediate passage of this act is necessary to enable such cities of the second class to establish an airport commission to be operated pursuant to the authority of Act 53 of 1949, and to enable cities of the second class establishing airport commissions to issue revenue bonds under the provisions of Act 175 of 1959, to finance improvements of airports. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 62, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the

immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the state of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 48, § 3: Feb. 12, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that Arkansas law prohibits elected and appointed government officials from serving on municipal airport commissions; that the appointment of such officials to municipal airport commissions would in many instances be in the best interests of

the communities involved, and that this Act is immediately necessary to eliminate the existing restriction. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improve-

ments to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Zoning regulations limiting use of property near airport as taking of property. 18 ALR 4th 542.

Operations or flight of aircraft as constituting taking or damaging of property. 22 ALR 4th 863.

Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR 4th 674.

14-359-101. Title.

This chapter shall be known as the "Airport Commission Act."

History. Acts 1949, No. 53, § 1; A.S.A. 1947, § 74-501.

CASE NOTES

Cited: E.E. Terry, Inc. v. Helena & W. Helena, 256 Ark. 226, 506 S.W.2d 573 (1974).

14-359-102. Applicability.

This chapter shall apply to cities of the first class and of the second class or any group of cities jointly owning or operating a municipal airport.

History. Acts 1949, No. 53, § 2; 1969, No. 308, § 1; A.S.A. 1947, § 74-502.

Publisher's Notes. Acts 1969, No. 308, § 2, provided that the provisions of §§ 14-360-301 — 14-360-313 shall be ap-

plicable to any city of the second class that may establish an airport commission as authorized in §§ 14-359-102, 14-359-103.

14-359-103. Authority to create.

Any city of the first class or of the second class owning and operating a municipal airport and its relative properties and facilities, or any city of the first class or second class desiring to own and operate a municipal airport, by appropriate action of its city council or other governing body, may create a commission for the purpose of operating and managing the airport and its relative properties and facilities.

History. Acts 1949, No. 53, § 2; 1969, No. 308, § 1; A.S.A. 1947, § 74-502.

CASE NOTES**Agency of City.**

Airport commission created by city pursuant to this section was not a separate corporate entity, but was acting as agency of city in contract for construction of air-

port facilities adjacent to city, making city liable for indebtedness arising out of the transactions. *L.C. Eddy, Inc. v. City of Arkadelphia*, 303 F.2d 473 (8th Cir. 1962).

14-359-104. Creation of commission.

(a) Any city affected by and desiring to avail itself of the benefits of this chapter shall, by a majority vote of the elected and qualified members of its city council, enact an ordinance creating an airport commission to be composed of five (5) citizens who are qualified electors of the state.

(b)(1) At least one (1) of the five (5) members shall be fully experienced in aviation, holding some type of pilot aeronautical rating.

(2) If there is not any citizen experienced in aviation holding some type of pilot's aeronautical rating who is available or willing to serve on the commission, then the city council may waive this requirement.

(c) No member of the commission shall engage financially in any aeronautical enterprise while a member of the commission.

History. Acts 1949, No. 53, § 3; 1981, No. 48, § 1; A.S.A. 1947, § 74-503.

CASE NOTES

Cited: *E.E. Terry, Inc. v. Helena & W. Helena*, 256 Ark. 226, 506 S.W.2d 573 (1974).

14-359-105. Appointment of commissioners.

(a) The commissioners shall be appointed by the mayor and confirmed by a three-fourths ($\frac{3}{4}$) vote of the elected and qualified members of the city council.

(b)(1) The commissioners first appointed and confirmed shall serve for terms of one (1), two (2), three (3), four (4), and five (5) years each, to be designated by the mayor.

(2) Upon the expiration of their respective terms, their successors shall be appointed by the mayor, subject to the approval of the council, for a term of five (5) years.

(c) The commissioners shall file the oath required by law in the State of Arkansas.

History. Acts 1949, No. 53, § 4; A.S.A. 1947, § 74-504.

14-359-106. Removal of commissioners.

Any commissioner appointed by the provisions of this chapter may be removed upon a three-fourths ($\frac{3}{4}$) vote of the elected and qualified members of the city council.

History. Acts 1949, No. 53, § 5; A.S.A. 1947, § 74-505.

14-359-107. Salary of commissioners.

The city council shall have authority to fix and prescribe the salaries to be paid to the commissioners.

History. Acts 1949, No. 53, § 4; A.S.A. 1947, § 74-504.

14-359-108. Meetings of commission.

The commissioners shall meet at least monthly, but other meetings may be held at any time by the commission or upon the call of the mayor and city council.

History. Acts 1949, No. 53, § 15; A.S.A. 1947, § 74-515.

14-359-109. Authority of commissioners.

(a)(1) The commissioners appointed under this chapter shall have full and complete authority to manage, operate, improve, extend, and maintain the municipal airport and its related properties and facilities.

(2) The commissioners shall have full and complete charge of the airport and its related properties and facilities, including the right to employ or remove any and all assistants and employees of whatsoever nature, kind, or character and to fix, regulate, and pay their salaries.

(b) It is the intention of this chapter to vest in the commissioners unlimited authority to operate, manage, maintain, improve, and extend the municipally owned airport and its related properties and facilities, and to have full and complete charge of it.

History. Acts 1949, No. 53, § 6; A.S.A. 1947, § 74-506.

14-359-110. Vesting of authority in commissioners.

(a) Upon the appointment of the commissioners as provided in this chapter, the mayor and city council shall execute such instruments and enact such measures as may be necessary to vest complete charge of the municipally owned airport and its related properties and facilities in the commissioners appointed.

(b) Upon their failure to do so, mandamus may be maintained against them, in any court of competent jurisdiction, by any taxpayer of the city where the airport and its related properties and facilities in question are located.

History. Acts 1949, No. 53, § 16; A.S.A. 1947, § 74-516.

14-359-111. Financing of improvements.

(a) All cities qualifying under this chapter are authorized to finance improvements of airport facilities as provided in any manner not inconsistent with the Arkansas Constitution and in accordance with any such finance method including, but not limited to, the issuance of bonds, borrowing money, and the allocation of other available municipal funds authorized cities of the first class in the necessary functions of municipal affairs.

(b) Bonds issued under the authority of this chapter shall bear interest at rate or rates as the ordinance authorizing their issuance may provide.

History. Acts 1949, No. 53, § 7; 1970 § 1; 1981, No. 425, § 1; A.S.A. 1947, (Ex. Sess.), No. 62, § 1; 1975, No. 225, § 74-507.

14-359-112. Eminent domain.

The city is expressly authorized to have all the rights of eminent domain as may be necessary and expedient for the proper operation and management of the municipal airport and its related properties and facilities as is granted by § 14-360-102.

History. Acts 1949, No. 53, § 8; A.S.A. 1947, § 74-508.

14-359-113. Zoning regulations.

The city is expressly authorized to put into effect zoning regulations necessary for the proper operation and management of the municipal airport and its related properties and facilities as provided by the Airport Zoning Enabling Act, § 14-363-201 et seq.

History. Acts 1949, No. 53, § 10;
A.S.A. 1947, § 74-510.

14-359-114. Rules and regulations.

(a)(1) The commissioners shall adopt such rules and regulations as they may deem necessary and expedient for the proper operation and management of the municipal airport and its related properties and facilities.

(2) The commissioners shall have authority to alter, change, or amend these rules and regulations at their discretion.

(b)(1) The commissioners shall comply with, or cause to be complied with, all civil air regulations of the federal and state government as to air worthiness, certification, and operation of aircraft.

(2) The commissioners shall protect all the aerial approaches to the airport insofar as it comes within their jurisdiction.

History. Acts 1949, No. 53, § 12;
A.S.A. 1947, § 74-512.

14-359-115. Additional powers of commissioners.

The commissioners shall, in addition to the other powers enumerated in this chapter, have such other and further powers as are by law given to the board of public affairs and the city council of any city. They shall be governed by all existing statutes pertaining to the duties of boards of public affairs and city councils.

History. Acts 1949, No. 53, § 11;
A.S.A. 1947, § 74-511.

14-359-116. Estimate of funds required.

The board of commissioners shall submit to the city, annually before the city prepares its budget, the amount of funds necessary for maintenance, operation, and management of the municipal airport and its related properties and facilities above the estimated revenue and the funds remaining on hand.

History. Acts 1949, No. 53, § 14;
A.S.A. 1947, § 74-514.

14-359-117. Use of operational revenue.

All revenue derived from the operation of the airport or flying field, after paying the operating expenses and maintenance, shall be set aside and used for additional improvements on the airport or for the retirement of bonds and interest thereon issued or advancement made for the purchase and improvement of the airport or flying field.

History. Acts 1949, No. 53, § 9; A.S.A. 1947, § 74-509.

14-359-118. Records and reports.

(a) The commissioners shall keep a record of all revenues and expenditures of the airport and its related properties and facilities and shall submit monthly reports to the mayor and city council.

(b)(1)(A) It shall be the duty of the airport commissioners to prepare and file an annual report of the financial affairs and conditions of the municipal airport and its related properties and facilities, annually by January 15 and the first Monday in February thereafter.

(B) The report shall be filed in the office of the clerk or recorder of the municipality and shall be subject to the inspection of any citizen of the state.

(2)(A) The report shall set out a full detailed, complete, and correct statement of all receipts of every kind since the last report, showing the source thereof, and all disbursements of every kind showing date, amount, number, and purposes of each voucher, to whom issued, and the date cancelled, if cancelled.

(B) The report shall show:

(i) The full financial condition of the airport and its related properties and facilities;

(ii) The status of its bonded debt, if any; and

(iii) Every other detail necessary to a full and thorough understanding from the report of the actual financial condition of the municipal airport.

(3) The report shall be verified by the airport board of commissioners.

(c) The commissioners shall also furnish such other and further reports, data, and information as may be requested by the mayor or city council.

History. Acts 1949, No. 53, § 13; A.S.A. 1947, § 74-513.

14-359-119. Civil service not applicable.

The Civil Service Act shall not apply to the commissioners or employees of a municipally owned airport and its related properties and facilities.

History. Acts 1949, No. 53, § 17;
A.S.A. 1947, § 74-517.

14-359-120. Pension and retirement plans.

(a) In any city of the first class, owning and operating a municipal airport and its related properties and facilities, by or through an airport board of commissioners, the commission is authorized to provide a plan for social security, old age pensions, or retirement pay for part or all employees of the airport and its related properties and facilities, under such plan as the commissioners may provide.

(b) If such a plan is not placed in effect, the seniority and retirement rights and benefits to which the airport personnel are entitled shall remain in full force and effect.

History. Acts 1949, No. 53, § 18;
A.S.A. 1947, § 74-518.

CHAPTER 360

MUNICIPAL AIRPORTS GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. JOINT MUNICIPAL AIRPORTS.
3. IMPROVEMENTS.

RESEARCH REFERENCES

ALR. Zoning regulations limiting use of property near airport as taking of property. 18 ALR 4th 542.

Airport operations or flight of aircraft as constituting taking or damaging of property. 22 ALR 4th 863.

Operations or flight of aircraft as con-

stituting taking or damaging of property. 22 ALR 4th 863.

Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR 4th 674.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

14-360-101. Municipal airports authorized.

14-360-102. Acquisition of property.

14-360-103. Improvements, operation, and maintenance.

SECTION.

14-360-104. Operation in another state.

14-360-105. Use of operational revenue.

Cross References. City-owned airports annexed to city, § 14-40-204.

Effective Dates. Acts 1929, No. 135, § 6: Mar. 14, 1929. Emergency clause provided: "Because of the rapid development of flying and the dangers incident thereto without adequate airports and flying fields an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1945, No. 39, § 2: Feb. 9, 1945.

Emergency clause provided: "It is hereby found and determined as a fact that the obtaining of necessary and adequate air transportation for cities of the first class is dependent upon the prompt acquisition, enlargement, extension and improvement of airports or flying fields by such municipalities, and this act being therefore necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall be full force and effect from and after its passage and approval."

14-360-101. Municipal airports authorized.

Cities of the first and second class and incorporated towns in the State of Arkansas may acquire and own airports or flying fields, which may be located either within or without the corporate limits of the cities or towns.

History. Acts 1929, No. 135, § 1; Pope's Dig., § 10037; Acts 1945, No. 18, § 1; A.S.A. 1947, § 74-201.

14-360-102. Acquisition of property.

(a) The real property for municipal airports or flying fields may be acquired by gift, purchase, or by the exercise of the right of eminent domain, which is granted to cities for this purpose.

(b) The procedure for the exercise of the right of eminent domain shall be that prescribed by law for the exercise of this power by railroads.

History. Acts 1929, No. 135, § 2; Pope's Dig., § 10038; Acts 1945, No. 39, § 1; A.S.A. 1947, § 74-202.

Cross References. Eminent domain power of railroads, § 18-15-1201 et seq.

CASE NOTES

In General.

In the exercise of the right of eminent domain by a municipality in condemning land for an airport, the law exercised by railroads applies, and where the verdict

rendered is excessive, the amount will be reduced or a new trial granted. *Harrison v. Moss*, 213 Ark. 721, 212 S.W.2d 334 (1948).

14-360-103. Improvements, operation, and maintenance.

(a) Cities are authorized to make, build, and construct all necessary improvements on their airports or flying fields.

(b) Cities are further authorized to operate and maintain their airports or flying fields.

History. Acts 1929, No. 135, § 3; Pope's Dig., § 10039; A.S.A. 1947, § 74-203.

CASE NOTES

Financing of Construction.

City may borrow money for construction of airport and pledge the earnings of the airport to repayment of loan and, if such earnings are insufficient, may trans-

fer money from its general revenue fund to an airport fund for such payment, subject only to the provisions of Ark. Const., Amend. No. 10. *Johnson v. Dermott*, 189 Ark. 830, 75 S.W.2d 243 (1934).

14-360-104. Operation in another state.

Any city of the first class which is located at or near the boundary of another state may acquire, own, improve, and operate an airport or flying field located wholly or in part in the other state.

History. Acts 1929, No. 135, § 4; Pope's Dig., § 10040; A.S.A. 1947, § 74-204.

14-360-105. Use of operational revenue.

All revenue derived from the operation of a municipal airport or flying field, after paying the operating expenses and maintenance, shall be set aside and used for additional improvements on the airport, or for the retirement of bonds and interest thereon issued for the purchase and improvement of the airport or flying field.

History. Acts 1929, No. 135, § 5; Pope's Dig., § 10041; A.S.A. 1947, § 74-205.

SUBCHAPTER 2 — JOINT MUNICIPAL AIRPORTS**SECTION.**

14-360-201. Authorization.

14-360-202. Administration.

Effective Dates. Acts 1939, No. 80, § 3: approved Feb. 14, 1939. Emergency clause provided: "It is ascertained and hereby declared that the number of airports in this State is wholly insufficient for the safety of those traveling by air; that more places where airplanes can land without danger are essential to the public safety; that for the public safety it is necessary to facilitate their construction; that by the passage of this act many

cities and towns in Arkansas in close proximity to each other, which are otherwise financially unable to do so, could provide such airports and thereby add to the safety of the lives of the inhabitants of the State. Therefore an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect immediately on its passage."

CASE NOTES**Constitutionality.**

The Arkansas Constitution does not prohibit two cities from owning property as tenants in common, and this subchapter being constitutional, cities have the

authority to issue bonds and levy a tax to pay for the airport. *Ragsdale v. Hargraves*, 198 Ark. 614, 129 S.W.2d 967, 123 A.L.R. 993 (1939).

14-360-201. Authorization.

Any two (2) or more municipal corporations in the State of Arkansas may own and hold in joint tenancy, by gift or purchase, lands for use as airports or flying fields, which may be located either within or without their corporate limits, and may enter into contracts or agreements with each other, authorized by ordinances, for their joint operation, control, maintenance, improvement, and development.

History. Acts 1939, No. 80, § 1; A.S.A. 1947, § 74-206.

14-360-202. Administration.

The councils of municipal corporations shall provide, by ordinances, for a joint airport commission for the control and administration of joint airports or flying fields with such powers, including the fixing of proper charges for their use and the expenditure of the revenues therefrom, and to be composed of such numbers of members representing each municipal corporation, as the ordinances may provide.

History. Acts 1939, No. 80, § 2; A.S.A. 1947, § 74-207.

SUBCHAPTER 3 — IMPROVEMENTS

SECTION.

- 14-360-301. Authority granted cumulative.
- 14-360-302. Authority to erect.
- 14-360-303. Recommendation by commission.
- 14-360-304. Operation after completion.
- 14-360-305. Borrowing of funds and revenue bonds — Authorization to contract.
- 14-360-306. Borrowing of funds and revenue bonds — Issuance.
- 14-360-307. Borrowing of funds and revenue bonds — Payment and indebtedness.
- 14-360-308. Borrowing of funds and revenue

SECTION.

- nue bonds — Statements on bonds.
- 14-360-309. Borrowing of funds and revenue bonds — Performance required.
- 14-360-310. Borrowing of funds and revenue bonds — Mortgage lien.
- 14-360-311. Borrowing of funds and revenue bonds — Refunding bonds.
- 14-360-312. Borrowing of funds and revenue bonds — Exemption from certain taxes.
- 14-360-313. Use of operational revenue.

Preambles. Acts 1959, No. 175 contained a preamble which read, "Whereas, Municipal Airport Commissions are in need of additional funds for the proper operation, maintenance and development of airports under their jurisdiction, and sufficient funds are not available from the revenues derived from the ordinary operation of airports or from revenues derived from ordinary tax sources; and

"Whereas, Municipal airports often comprise lands located contiguous to and adjoining, but outside of, the actual flying field together with its appurtenant areas used for airport buildings and related airport facilities, which lands are presently lying idle but may be devoted to income producing uses by the Municipal Airport Commissions; and

"Whereas, the purpose of this Act is to enable the Municipal Airport Commissions to obtain an additional source of revenues for the operation, maintenance and development of airports under their jurisdiction by putting to revenue producing use lands under their jurisdiction which are not being used for the actual operation of the municipal airport or for uses incidental to such airport operation"

Effective Dates. Acts 1959, No. 175, § 9: Mar. 4, 1959. Emergency clause provided: "It is hereby found and declared

that the municipal airports are in need of funds for their proper operation, maintenance and development and that sufficient funds are not available from the revenues derived from the ordinary operation of the airport or from funds furnished by municipalities obtained from ordinary tax sources, and therefore additional sources of obtaining revenues are immediately necessary. It is, therefore, declared that an emergency exists and this Act being necessary for the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 34, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety,

shall be in effect from and after its passage and approval."

Acts 1975, No. 301, § 6: Mar. 3, 1975. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that some Arkansas municipalities prefer to operate their municipal airports other than through an airport commission and that there is no valid reason why they should be restricted in that regard, that the inability, under existing law, of municipalities to convey mortgage liens as security for the payment of airport revenue bonds issued for the purpose of constructing industrial or similar improvements restricts severely the ability of municipalities to finance such improvements, that the conveyance of mortgage liens is customary in connection with the issuance of bonds for such purposes and that it is essential to the continued economic and industrial development of the State of Arkansas that immediate provision be made for the adequate security of

bonds issued for such purposes. Therefore, an emergency is declared to exist and this Act, being immediately necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

14-360-301. Authority granted cumulative.

The authority granted by this subchapter shall be cumulative and granted in addition to any authority previously granted by other acts, specifically including but not limited to all authority granted by Acts 1949, No. 53, known as the "Airport Commission Act".

History. Acts 1959, No. 175, § 5; A.S.A. 1947, § 74-523.

14-360-302. Authority to erect.

Any city owning a municipal airport is authorized and empowered to erect and construct buildings, structures, and other improvements, whether or not they are essential to, connected with, or incidental to the operation of the airport and airport facilities, upon municipal airport property, that is, upon lands which are managed and operated by the city, by its governing body, or through its airport commission or other designated municipal agency in conjunction with, or as a part of, the municipal airport.

History. Acts 1959, No. 175, § 1; 1975, No. 301, § 1; A.S.A. 1947, § 74-519.

14-360-303. Recommendation by commission.

The authority granted by this subchapter to a city may be exercised by the governing body of the city, in its discretion, only after it has received the recommendation of its airport commission in the form of a resolution of the airport commission.

History. Acts 1959, No. 175, § 2;
A.S.A. 1947, § 74-520.

14-360-304. Operation after completion.

The airport commission is authorized and empowered to operate the buildings, structures, or other improvements, after the completion thereof, including, without limiting the generality of this grant, the execution of lease agreements covering the leasing of space therein in such form, for such terms, with such provisions, for such amounts, and with such parties including, but not limited to, governmental agencies and private businesses of any nature, whether or not they are essential to, connected with, or incidental to the operation of the airport and airport facilities, as the commission shall determine.

History. Acts 1959, No. 175, § 3;
A.S.A. 1947, § 74-521.

14-360-305. Borrowing of funds and revenue bonds — Authorization to contract.

A city is authorized and empowered to enter into the necessary contracts for the borrowing of all funds that it may determine will be required in connection with the financing of the structures, buildings, or other improvements or the construction of extensions, additions, or improvements thereto, after the original construction is completed, including architectural, engineering, legal, or other similar expenses.

History. Acts 1959, No. 175, § 4; 1970 § 2; 1981, No. 425, § 41; A.S.A. 1947, (Ex. Sess.), No. 34, § 1; 1975, No. 301, § 74-522.

14-360-306. Borrowing of funds and revenue bonds — Issuance.

(a) In evidence of any loan of funds, the city is authorized and empowered to issue its negotiable coupon revenue bonds.

(b)(1) The bonds shall be authorized by ordinance duly enacted by the governing body of the city and shall be executed by its mayor and city clerk.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, the signatures shall nevertheless be valid and sufficient for all purposes.

(c) As the ordinance may provide, the bonds may:

(1) Be issued in one (1) or more series;

- (2) Bear such date or dates;
 - (3) Mature at such time or times, not exceeding forty (40) years from their respective dates;
 - (4) Bear interest at such rate or rates;
 - (5) Be in such form;
 - (6) Be executed in such manner;
 - (7) Be payable in such medium of payment, at such place or places;
 - (8) Be subject to such terms of redemption;
 - (9) Be registrable as to principal only; and
 - (10) Contain such terms, covenants, and conditions as the ordinance may provide. Priority between and among successive issues may be controlled by the ordinance, and the ordinance may provide for the maintenance of any adequate reserve for contingencies.
- (d) The bonds may be sold for such price and in such manner as the city may determine by ordinance duly adopted by its governing body.
- (e) The coupons attached to the bonds may be executed by the facsimile signature of the mayor of the city.
- (f) The bonds may be sold with the privilege of conversion into an issue bearing other rate or rates of interest but only on the condition that the city receive no less and pay no more than it would receive and pay if the bonds were not converted, and the conversion shall be subject to the approval of the city.
- (g) The bonds shall have all the qualities and incidents of negotiable instruments under the commercial paper laws of the state.

History. Acts 1959, No. 175, § 4; 1970, § 2; 1981, No. 425, § 41; A.S.A. 1947, (Ex. Sess.), No. 34, § 1; 1975, No. 301, § 74-522.

14-360-307. Borrowing of funds and revenue bonds — Payment and indebtedness.

(a) The bonds and interest thereon shall be payable solely from and secured by a pledge of the gross revenues derived from the operation or the lease of the buildings, structures, or other improvements, or other revenues obtained from the operation of the airport.

(b) The pledge shall be subject to the restriction that the municipality shall never in any fiscal year be bound beyond an amount that would, together with the other expenditures and contracts of the municipality, call for a payment or payments in that fiscal year in excess of the total revenue for the municipality for that fiscal year, so that the municipality shall never at any time by its contract or pledge of gross revenues and rentals violate the provisions of Arkansas Constitution, Amendment 10.

(c) The bonds shall, in no event, constitute an indebtedness of the municipality within the meaning of any constitutional provisions or limitations.

History. Acts 1959, No. 175, § 4; 1970, § 2; 1981, No. 425, § 41; A.S.A. 1947, (Ex. Sess.), No. 34, § 1; 1975, No. 301, § 74-522.

14-360-308. Borrowing of funds and revenue bonds — Statements on bonds.

It shall be plainly stated upon the face of each bond that it has been issued under the provisions of this subchapter and that it does not constitute an indebtedness of the municipality within any constitutional or statutory limitation.

History. Acts 1959, No. 175, § 4; 1970, § 2; 1981, No. 425, § 41; A.S.A. 1947, (Ex. Sess.), No. 34, § 1; 1975, No. 301, § 74-522.

14-360-309. Borrowing of funds and revenue bonds — Performance required.

(a) Subject to such restrictions as may be contained in the ordinance authorizing the issuance of the bonds issued under this subchapter or other contract with the bondholders as well as such restrictions contained in contracts with the bondholders of other prior issues, any holder of bonds issued under the provisions of this subchapter or of any coupon representing interest accrued thereon may, by proper suit, compel the performance of the duties of the officials of the issuing city or its airport commission set forth in this subchapter.

(b) If there is default in the payment of the principal of or interest upon any of the bonds, any court having jurisdiction in any proper action may appoint a receiver to operate the buildings, structures, or other improvements authorized by this subchapter on behalf of the city or its airport commission with power to operate or lease them in order to obtain funds for the payment of the bonds and interest thereon, and for the payment of the operation and maintenance expenses, and to apply the income and revenues in conformity with this subchapter and the ordinance providing for the issuance of the bonds.

(c) Any covenants and agreements entered into by the city shall be binding in all respects upon successive governing bodies of the city and the airport commission and its successors in accordance with the terms of such covenants and agreements.

History. Acts 1959, No. 175, § 4; 1970, § 2; 1981, No. 425, § 41; A.S.A. 1947, (Ex. Sess.), No. 34, § 1; 1975, No. 301, § 74-522.

14-360-310. Borrowing of funds and revenue bonds — Mortgage lien.

(a) Anything herein to the contrary notwithstanding, the ordinance authorizing issuance of the bonds may impose a foreclosable mortgage lien upon the buildings, structures, or other improvements constructed under the authority of this subchapter and upon the lands upon which such improvements are located.

(b) The nature and extent of the mortgage lien may be controlled by the ordinance including, without limitation, provisions pertaining to the release of all, or part of, the lands or improvements from the mortgage lien and the priority of mortgage liens in the event of successive bond issues.

(c) Subject to such terms, conditions, and restrictions as may be contained in the ordinance, any holder of bonds issued under the authority of this subchapter or of any coupon attached thereto may, either at law or in equity, enforce the mortgage lien and may, by proper suit, compel the performance of the duties of the officials of the city or its airport commission, as set forth in this subchapter and as set forth in the ordinance authorizing the bonds.

History. Acts 1959, No. 175, § 4; 1970, § 2; 1981, No. 425, § 41; A.S.A. 1947, (Ex. Sess.), No. 34, § 1; 1975, No. 301, § 74-522.

14-360-311. Borrowing of funds and revenue bonds — Refunding bonds.

(a) The city may issue bonds under this subchapter for the purpose of refunding, at a rate or rates of interest not exceeding the maximum rate otherwise authorized in this section, any obligations of the city theretofore issued under this subchapter or under other authority or may authorize and deliver a single issue of bonds under this subchapter in part for the purpose of refunding such obligations and in part for the purpose of erecting and constructing buildings, structures, and other improvements authorized by this subchapter, or extensions, additions, or improvements thereto.

(b)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof.

(c) All bonds issued under this subsection shall in all respects be authorized, issued, and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of such bonds.

(d) The city may provide that any refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations thereby refunded.

History. Acts 1959, No. 175, § 4; 1970, § 2; 1981, No. 425, § 41; A.S.A. 1947, (Ex. Sess.), No. 34, § 1; 1975, No. 301, § 74-522.

14-360-312. Borrowing of funds and revenue bonds — Exemption from certain taxes.

(a) Bonds issued under the provisions of this subchapter shall be exempt from all state, county, and municipal taxes.

(b) This exemption shall include income taxation and inheritance taxation.

History. Acts 1959, No. 175, § 4; 1970 (Ex. Sess.), No. 34, § 1; 1975, No. 301, § 2; 1981, No. 425, § 41; A.S.A. 1947, § 74-522.

A.C.R.C. Notes. Language excluding property taxes from the exemption provided by this section was deleted pursuant to Arkansas Constitution, Amendment 57, § 1, and § 26-3-302. The Arkansas Constitution, Amendment 57, § 1, provides that the General Assembly may classify intangible personal property for

assessment at lower percentages of value than other property and may exempt one or more classes of intangible personal property from taxation, or may provide for the taxation of intangible personal property on a basis other than ad valorem. Section 26-3-302 exempts all intangible personal property in this state from all ad valorem tax levies of counties, cities, and school districts in the state as of January 1, 1976.

14-360-313. Use of operational revenue.

Subject to such restrictions as may be contained in the ordinance authorizing the issuance of the bonds issued under this subchapter or other contract with the bondholders, as well as restrictions contained on contracts with the bondholders of other prior issues, all revenues derived from the operation and the lease of buildings, structures, or other improvements in excess of those required for payment of and interest upon the bonds, plus any reserve for contingencies, plus those funds required for operation and maintenance expenses for the buildings, structures, or other improvements, shall be used by the airport commission only for the purpose of expansion, maintenance, or operation of the airport or any of its facilities, buildings, or other improvements. This may include the payment of principal of and interest upon other bonds issued under this subchapter, or of other prior issues, and for no other purpose.

History. Acts 1959, No. 175, § 5; A.S.A. 1947, § 74-523.

CHAPTER 361

AIRPORTS IN BORDER MUNICIPALITIES

SECTION.

14-361-101. Title.

14-361-102. Definitions.

14-361-103. Construction.

14-361-104. Powers of municipalities generally.

14-361-105. Supplementary powers.

SECTION.

14-361-106. Functions — Public and governmental.

14-361-107. Operation and use privileges.

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SECTION.

- 14-361-110. Delegation of authority.
- 14-361-111. Jurisdiction and regulation.
- 14-361-112. Zoning.
- 14-361-113. Liens.
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- 14-361-117. Federal and state aid.
- 14-361-118. Joint operations — Authorization.

SECTION.

- 14-361-119. Joint operations — Agreements.
- 14-361-120. Joint operations — Joint boards.
- 14-361-121. Joint operations — Limitations on joint boards.
- 14-361-122. Joint operations — Joint fund.
- 14-361-123. Levy of special tax.
- 14-361-124. Tax exemptions.

Effective Dates. Acts 1953, No. 128, § 23: approved Feb. 23, 1953. Emergency clause provided: "It has been found and is declared by the General Assembly that the present laws of this State dealing with aeronautics are inadequate; further, that this great industry is growing to immense proportions, and the further fact that the public welfare will best be served by the passage of this Act, therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage."

Acts 1970 (Ex. Sess.), No. 42, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has

been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Zoning regulations limiting use of property near airport as taking of property. 18 ALR 4th 542.
 Airport operations or flight of aircraft as constituting taking or damaging of property. 22 ALR 4th 863.
 Operations or flight of aircraft as con-

stituting taking or damaging of property. 22 ALR 4th 863.
 Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR 4th 674.

14-361-101. Title.

This chapter may be cited as the "Municipal Airports Act."

History. Acts 1953, No. 128, § 22;
 A.S.A. 1947, § 74-620.

14-361-102. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon;
- (2) "Air navigation facility" means any facility, other than one owned and operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanism, lights, beacons, markers, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport and any combination of any or all of these facilities;
- (3) "Airport hazard" means any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to the landing or taking off of aircraft;
- (4) "Municipality" means any municipality of the first or second class, the city limits of which are within five (5) miles of a boundary line of this state; and
- (5) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof.

History. Acts 1953, No. 128, § 1;
 A.S.A. 1947, § 74-601.

14-361-103. Construction.

(a) This chapter shall be interpreted and construed so as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of municipal airports.

(b) This chapter is cumulative of and in addition to all laws of the State of Arkansas on this subject.

History. Acts 1953, No. 128, §§ 19, 21;
A.S.A. 1947, §§ 74-619, 74-619n.

CASE NOTES

Cited: *Kirksey v. City of Fort Smith*,
227 Ark. 630, 300 S.W.2d 257 (1957).

14-361-104. Powers of municipalities generally.

(a) **ESTABLISHMENT, OPERATION, AND LAND ACQUISITION.** Every municipality as defined in § 14-361-102 is authorized, out of any appropriations or other moneys made available for such purposes, to plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities, either within or without the territorial limits of the municipality and within or without the territorial boundaries of this state, including the construction, installation, equipment, maintenance, and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers, and the purchase and sale of supplies, goods, and commodities as an incident to the operation of its airport properties. For such purposes, the municipality may use any available property that it may own or control and may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire real or personal property or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airport or to permit the removal, elimination, obstruction-marking of obstructions, lighting of airport hazards, or to prevent the establishment of airport hazards.

(b) **ACQUISITION OF EXISTING AIRPORTS.** The municipality may, by purchase, gift, devise, lease, proceedings, or otherwise, acquire existing airports and navigation facilities. However, it shall not acquire or take over any airport or air navigation facility owned or controlled by another municipality or public agency of this or any other state without the consent of the municipality or public agency.

(c) **ESTABLISHMENT OF AIRPORT ON PUBLIC WATERS AND RECLAIMED LANDS.** For the purposes of this chapter, a municipality may establish or acquire and maintain, within or bordering upon the territorial limits of the municipality, airports in, over, and upon any public

waters of this state, any submerged lands under public waters, and any artificial or reclaimed lands which, before the artificial making or reclamation thereof, constituted a portion of the submerged lands under public waters and may construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(d) **LIMITATION ON DESIGN AND OPERATION OF AIR NAVIGATION FACILITIES.** All air navigation facilities established or operated by municipalities shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

History. Acts 1953, No. 128, § 2;
A.S.A. 1947, § 74-602.

Cross References. Acquisition of airports outside of state, § 14-360-104.

CASE NOTES

Operation and Maintenance.

The operation and maintenance of a municipal airport by a city constitutes a governmental and not a proprietary function. *Kirksey v. City of Fort Smith*, 227 Ark. 630, 300 S.W.2d 257 (1957).

A municipal corporation is not liable for a tort committed in connection with the operation and maintenance of its airport. *Kirksey v. City of Fort Smith*, 227 Ark. 630, 300 S.W.2d 257 (1957).

14-361-105. Supplementary powers.

In addition to the general and special powers conferred by this chapter, every municipality is authorized to exercise such powers as are necessarily incidental to the exercise of the conferred general and special powers.

History. Acts 1953, No. 128, § 17;
A.S.A. 1947, § 74-617.

14-361-106. Functions — Public and governmental.

(a) The acquisition of any land or interest therein pursuant to this chapter, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any other powers granted in this chapter to municipalities and public agencies thereof, to be severally or jointly exercised, are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. In the case of any municipality, they are declared to be municipal functions and purposes as well as public and governmental.

(b) All land and other property and privileges acquired and used by or on behalf of any municipality or other public agency in the manner and for the purposes enumerated in this chapter shall be acquired and

used for public and governmental purposes and as a matter of public necessity and for municipal purposes.

History. Acts 1953, No. 128, § 15;
A.S.A. 1947, § 74-615.

RESEARCH REFERENCES

Ark. L. Rev. Expansion of Municipal Corporation Tort Liability — A Legislative Responsibility, 14 Ark. L. Rev. 313.

CASE NOTES

Maintenance and Operation.

The maintenance and operation of a municipal airport is in the interest of the public generally, and it is within the

province of the legislature to determine that it constitutes a governmental function. *Kirksey v. City of Fort Smith*, 227 Ark. 630, 300 S.W.2d 257 (1957).

14-361-107. Operation and use privileges.

(a) **UNDER MUNICIPAL OPERATION.** In operating an airport or air navigation facility owned, leased, or controlled by a municipality, the municipality, except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to § 14-361-117, may enter into contracts, leases, and other arrangements for a term not exceeding forty (40) years with any persons:

(1) Granting the privilege of using or improving the airport or air navigation facility, or any portion or facility thereof, or space therein for commercial purposes;

(2) Conferring the privilege of supplying goods, commodities, things, services, or facilities at that airport or air navigation facility; or

(3)(A) Making available services to be furnished by the municipality or its agents at that airport or navigation facility.

(B) In each case, the municipality may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the municipality.

(b) **UNDER OTHER OPERATION.** Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to § 14-361-117, a municipality, by contract, lease, or other arrangement, upon a consideration fixed by it, may grant to any qualified person, for a term not to exceed forty (40) years, the privilege of operating as agent of the municipality, or otherwise, any airport owned or controlled by the municipality. No person shall be granted any authority to operate the airport other than a public airport or to enter into any contracts, leases, or other agreements in connection with the operation of the

airport which the municipality might not have undertaken under subsection (a) of this section.

History. Acts 1953, No. 128, § 4;
A.S.A. 1947, § 74-604.

14-361-108. Contracts.

A municipality may enter into any contracts necessary to the execution of the powers granted it and for the purposes provided by this chapter.

History. Acts 1953, No. 128, § 13;
A.S.A. 1947, § 74-613.

14-361-109. Disposal of property.

(a) Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to § 14-361-117, every municipality may, by sale, lease, or otherwise, dispose of any airport, air navigation facility, or other property, or portion thereof or interest therein, acquired pursuant to this chapter.

(b)(1) Disposal by sale, lease, or otherwise shall be in accordance with the laws of this state, or provisions of the charter of the municipality, governing the disposition of other property of the municipality.

(2) In the case of disposal to another municipality or agency of the state or federal government for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may deem in the best interest of the municipality.

History. Acts 1953, No. 128, § 3;
A.S.A. 1947, § 74-603.

14-361-110. Delegation of authority.

Any authority vested by this chapter in a municipality, or in the governing body thereof, for the planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports or other air navigation facilities established, owned, or controlled or to be established, owned, or controlled by the municipality may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers and duties shall be prescribed in the resolution. However, the expense of such planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection, and policing shall be a responsibility of the municipality.

History. Acts 1953, No. 128, § 6;
A.S.A. 1947, § 74-606.

14-361-111. Jurisdiction and regulation.

(a)(1)(A) **SCOPE.** A municipality, which has established or acquired an airport or air navigation facility is authorized to adopt, amend, and repeal such reasonable ordinances, resolutions, rules, regulations, and orders as it shall deem necessary for the management, government, and use of the airport or air navigation facility under its control, whether situated within or without the territorial limits of the municipality.

(B)(i) For the enforcement of them, the municipality, by ordinance or resolution as may by law be appropriate, may appoint airport guards or police, with full police powers, and fix penalties, within the limits prescribed by law, for the violation of the ordinances, resolutions, rules, regulations, and orders.

(ii) The penalties shall be enforced in the same manner in which penalties prescribed by other ordinances or resolutions of the municipality are enforced.

(2) To the extent that an airport or other air navigation facility controlled and operated by a municipality is located outside the territorial limits of the municipality, it shall, subject to federal and state laws, rules, and regulations, be under the jurisdiction and control of the municipality controlling or operating it, and no other municipality shall have any authority to charge or exact a license fee or occupation tax for operations thereon.

(b) **CONFORMITY TO FEDERAL AND STATE LAW.** No ordinance, resolution, rule, regulation, or order adopted by a municipality pursuant to this chapter shall be inconsistent with, or contrary to, any act of the Congress of the United States or laws of this state, or to any regulations promulgated or standards established pursuant to them.

History. Acts 1953, No. 128, § 7;
A.S.A. 1947, § 74-607.

14-361-112. Zoning.

Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

History. Acts 1953, No. 128, § 18;
A.S.A. 1947, § 74-618.

14-361-113. Liens.

To enforce the payment of any charges for repairs or improvements to, or storage or care of, any personal property made or furnished by the municipality or its agents, in connection with the operation of an airport or air navigation facility owned or operated by the municipality, the municipality shall have liens on the property, which shall be enforceable by the municipality as provided by law.

History. Acts 1953, No. 128, § 5; A.S.A. 1947, § 74-605.

14-361-114. Issuance of bonds.

(a)(1) The cost of planning, acquiring, establishing, developing, constructing, enlarging, improving, or equipping an airport or air navigation facility, or the site therefor, including buildings and other facilities incidental to the operation thereof, and the acquisition or elimination of airport hazards may be paid for, wholly or partly, from the proceeds of the sale of bonds of the municipality, as the governing body of the municipality shall determine.

(2)(A) For these purposes, a municipality may issue general or special obligation bonds, revenue bonds, or other forms of bonds, secured or unsecured, including refunding bonds.

(B)(i) All bonds issued by a municipality pursuant to this chapter which are payable, as to principal and interest, solely from the revenues of an airport or air navigation facility shall so state on their face.

(ii) In any suit, action, or proceeding involving the security, or the validity or enforceability, of any bonds issued by a municipality, which bonds state on their face that they were issued pursuant to the provisions of this chapter and for a purpose or purposes authorized to be accomplished by this chapter, the bonds shall be conclusively deemed to have been issued pursuant to this chapter for such purposes.

(b) Bonds issued under the authority of this chapter shall bear interest at a rate or rates as the ordinances authorizing their issuance may provide.

History. Acts 1953, No. 128, § 9; 1970 § 2; 1981, No. 425, § 2; A.S.A. 1947, (Ex. Sess.), No. 42, § 1; 1975, No. 225, § 74-609.

14-361-115. Validation of prior actions.

(a) Any acquisition of property previously made, within or without the limits of any municipality of the state, for the purposes authorized by this chapter, and any other action heretofore taken by a municipality in the furtherance of these purposes including, but not limited to, the making of appropriations, the expenditure of money, the incurring of debts, the acceptance and disbursement of federal, state, or other

grants or loans, the issuance and payment of bonds, or the execution of leases and contracts, which acquisition or action would have been authorized had this chapter been in effect at the time of the acquisition or action, is ratified and made valid.

(b) All bonds previously issued in furtherance of purposes authorized by this chapter and actions ratified by this section are confirmed as legal obligations of the municipality, and without prejudice to the general powers granted to the municipality by this chapter, the municipality is authorized to issue further bonds for these purposes up to the limit fixed in the original authorization therefor, which bonds shall be legal obligations in accordance with their terms.

History. Acts 1953, No. 128, § 10;
A.S.A. 1947, § 74-610.

14-361-116. Disposition of revenues.

(a) The revenues obtained by a municipality from the ownership, control, or operation of any airport or air navigation facility, including proceeds from the sale of any airport or portion thereof or air navigation facility property, shall be deposited in a special fund to be called the ". Airport Fund."

(b) The revenues shall be appropriated solely to, and used by the municipality for, the purposes authorized by this chapter.

History. Acts 1953, No. 128, § 11;
A.S.A. 1947, § 74-611.

14-361-117. Federal and state aid.

(a)(1) **ACCEPTANCE AUTHORIZED, CONDITIONS.** Every municipality is authorized to accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan, or both, to accomplish, in whole or in part, any of the purposes of this chapter.

(2)(A) All federal moneys accepted under this section shall be accepted and expended by the municipality upon such terms and conditions as are prescribed by the United States and as are consistent with state law.

(B) All state moneys accepted under this section shall be accepted and expended by the municipality upon such terms and conditions as are prescribed by the state.

(3) Unless otherwise prescribed by the agency from which the moneys were received, the chief financial officer of the municipality shall, on its behalf, deposit all moneys received pursuant to this section and shall keep them, in separate funds designated according to the purposes for which the moneys were made available, in trust for these purposes.

(b)(1)(A)(i) **AERONAUTICS COMMISSION AS AGENT.** A municipality is authorized to designate the Arkansas Department of Aeronautics as its

agent to accept, receive, receipt for, and disburse federal and state moneys and other moneys, public or private, made available by grant or loan, or both, to accomplish, in whole or in part, any of the purposes of this chapter and to designate the commission as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment, or operation of any airport or other air navigation facility.

(ii) All contracts made, let, or awarded by the department, acting as agent of a municipality under authority of this section, shall be made, let, or awarded pursuant to the laws governing the making of contracts by or on behalf of the state.

(B) The municipality may enter into an agreement with the department prescribing the terms and conditions of the agency in accordance with such terms and conditions as are prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state.

(2)(A) All federal moneys shall be accepted and transferred or expended by the commission upon such terms and conditions as are prescribed by the United States.

(B) All moneys received by the department pursuant to this subsection shall be deposited in the State Treasury and, unless otherwise prescribed by the agency from which the moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available and held by the state in trust for these purposes.

History. Acts 1953, No. 128, § 12;
A.S.A. 1947, § 74-612.

14-361-118. Joint operations — Authorization.

(a)(1) For the purposes of this section and §§ 14-361-119 — 14-361-122, unless the context otherwise requires, the term “public agency” includes municipality, as defined in this chapter, any agency of the state government and of the United States, and any municipality, political subdivision, and agency of another state; and

(2) The term “governing body” means the governing body of the municipality, and the head of the agency if the public agency is other than a municipality.

(b)(1) All powers, privileges, and authority granted to any municipality by this chapter may be exercised and enjoyed jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment.

(2) If not otherwise authorized by law, any agency of the state government, when acting jointly with any municipality, may exercise and enjoy all of the powers, privileges, and authority conferred by this chapter upon a municipality.

History. Acts 1953, No. 128, § 14;
A.S.A. 1947, § 74-614.

14-361-119. Joint operations — Agreements.

(a) Any two (2) or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this chapter, and any two (2) or more municipalities are specially authorized to make such agreement or agreements as they may deem necessary for the joint acquisition and operation of airports and air navigation facilities.

(b)(1) Concurrent action by ordinance, resolution, or otherwise of the governing bodies of the participating public agencies shall constitute joint action.

(2) Each such agreement shall specify:

(A) Its duration;

(B) The proportionate interest which each public agency shall have in the property;

(C) Facilities and privileges involved;

(D) The proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility;

(E) The proportion of the expenses of maintenance, operation, regulation, and protection thereof to be borne by each; and

(F) Such other terms as are required by the provisions of this section.

(3) The agreement may also provide for:

(A) Amendments thereof, and conditions and methods of termination of the agreement;

(B) The disposal of all or any of the property, facilities, and privileges jointly owned, prior to or upon the property, facilities, and privileges, or any part thereof, ceasing to be used for the purposes provided in this chapter, or upon termination of the agreement;

(C) The distribution of the proceeds received upon any such disposal, and of any funds or other property jointly owned and undisposed of;

(D) The assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and

(E) Such other provisions as may be necessary or convenient.

History. Acts 1953, No. 128, § 14;
A.S.A. 1947, § 74-614.

14-361-120. Joint operations — Joint boards.

(a)(1) Public agencies acting jointly pursuant to this section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency.

(2) The number to be appointed, their term, and compensation, if any, shall be provided for in the joint agreement.

(b) Each joint board shall organize, select officers for terms to be fixed by the agreement, and adopt and amend, from time to time, rules for its own procedure.

(c) The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated, and the board may exercise, on behalf of its constituent public agencies, all the powers of each with respect to the airport, air navigation facility, or airport hazard, subject to the limitations of § 14-361-121.

History. Acts 1953, No. 128, § 14;
A.S.A. 1947, § 74-614.

14-361-121. Joint operations — Limitations on joint boards.

(a) **EXPENDITURES.** The total expenditures to be made by the joint board for any purpose in any calendar year shall be determined by a budget approved by the governing bodies of its constituent public agencies on or before the preceding December 1.

(b) **ACQUISITIONS BEYOND SUMS ALLOTTED.** No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums therefor fixed by the joint agreement or allotted in the annual budget, may be acquired by the joint board without the approval of the governing bodies of its constituent public agencies.

(c)(1) **EMINENT DOMAIN.** Eminent domain proceedings under this section may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board.

(2) If so authorized, these proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by the public agencies as tenants in common until conveyed by them to the joint board.

(d) **DISPOSAL OF REAL PROPERTY.** The joint board shall not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies. However, the joint board may, without such consent, enter into the contract, lease, or other arrangements contemplated by § 14-361-107.

(e) **POLICE REGULATIONS.** Any resolutions, rules, regulations, or orders of the joint board dealing with subjects authorized by § 14-361-111 shall become effective only upon approval of the governing bodies of the constituent public agencies provided that, upon such

approval, the resolutions, rules, regulations, or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, rules, regulations, or orders of each public agency would have in its own territory or jurisdiction.

History. Acts 1953, No. 128, § 14;
A.S.A. 1947, § 74-614.

14-361-122. Joint operations — Joint fund.

(a)(1) For the purpose of providing a joint board with moneys for the necessary expenditures in carrying out the provisions of this section and §§ 14-361-118 — 14-361-121, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement.

(2) Each of the constituent public agencies shall provide its share of the fund from sources available to each.

(b)(1) Any federal, state, or other contributions or loans, and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board, shall be paid into the joint fund.

(2) Disbursements from the fund shall be made by order of the board, subject to the limitations prescribed in § 14-361-121.

History. Acts 1953, No. 128, § 14;
A.S.A. 1947, § 74-614.

14-361-123. Levy of special tax.

In addition to and exclusive of any taxes which may be levied for the interest and sinking fund of any bonds, notes, or time warrants issued under authority of this chapter or any other act of the General Assembly authorizing municipalities to issue such bonds, notes, or warrants for airport purposes, the governing body of any municipality may levy and collect a special tax for the purpose of improving, operating, maintaining, and conducting an airport or air navigation facility, or for any other purpose falling within the purview of this chapter. However, the total of the special tax, together with all other taxes levied by the municipality, shall not exceed the limit placed on the municipal taxes by Arkansas Constitution, Article 14, § 4, nor exceed the limits of indebtedness placed upon municipalities by the constitution and laws of this state.

History. Acts 1953, No. 128, § 8;
A.S.A. 1947, § 74-608.

14-361-124. Tax exemptions.

(a) Any property in this state acquired by a municipality for airport purposes pursuant to the provisions of this chapter and any income derived by the municipality from the ownership, operation, or control thereof, shall be exempt from taxation to the same extent as other property used for public purposes.

(b) Any municipality is authorized to exempt from municipal taxation any property acquired within its boundaries by a public agency of another state for airport purposes and any income derived from the property, to the extent that the other state authorizes similar exemptions from taxation to municipalities of this state.

History. Acts 1953, No. 128, § 16;
A.S.A. 1947, § 74-616.

CASE NOTES

Cited: Kirksey v. City of Fort Smith,
227 Ark. 630, 300 S.W.2d 257 (1957).

CHAPTER 362
REGIONAL AIRPORTS

SECTION.

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- 14-362-129. Existing authorities.

Effective Dates. Acts 1968 (1st Ex. Sess.), No. 17, § 22: Feb. 15, 1968. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is currently no specific authority for the creation of regional airports through cooperative efforts of cities and counties, and that the existing general statutes under which such airports might be created have produced confusion as to the extent of their applicability in these circumstances; that the passage of this act will make it possible to provide the necessary airport facilities on a regional basis to meet the air travel needs of the public. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1970 (Ex. Sess.), No. 63, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 426, § 10: Mar. 22, 1973. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that it is immediately necessary that Regional Airport Authorities of this State be authorized to levy and collect the tax authorized to be levied and collected by this Act if they are to complete the construction and equipment of facilities and properties which are essen-

tial to their growth and development and to the growth and development of the economy of the State of Arkansas and the economic welfare of her inhabitants. Therefore, an emergency is declared to exist and this Act, being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect upon its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this Act. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Zoning regulations limiting use of property near airport as taking of property. 18 ALR 4th 542.

Operations or flight of aircraft as constituting taking or damaging of property. 22 ALR 4th 863.

Airport operations or flight of aircraft

as constituting taking or damaging of property. 22 ALR 4th 863.

Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR 4th 674.

14-362-101. Title.

This chapter may be cited as the "Regional Airport Act."

History. Acts 1968 (1st Ex. Sess.), No. 17, § 1; 1973, No. 426, § 1; A.S.A. 1947, § 74-216.

14-362-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Authority" means any authority created under the provisions of this chapter;

(2) "Municipality" or "municipal corporation" means a city of the first class, a city of the second class, or an incorporated town;

(3) "Governing body" means the council, board of directors, or city commission of any municipality or the county court of any county;

(4) "Equip" means to install or place on or in any building or structure equipment of any and every kind, whether or not affixed, including, without limiting the generality of the foregoing, building service equipment, fixtures, heating equipment, air conditioning equipment, machinery, furniture, furnishings, and personal property of every kind;

(5) "Sell" means to sell for such price, in such manner, and upon such terms as the authority shall determine including, without limiting the generality of the foregoing, private or public sale; and if public, pursuant to such advertisement as the authority shall determine, sale for cash or credit payable in lump sum, or in installments over such period as the authority shall determine; and if on credit, with or without interest and at such rate or rates as the authority shall determine;

(6) "Lease" means to lease for such rentals, for such period or periods, and upon such terms and conditions as the authority shall determine, including, without limiting the generality of the foregoing, the granting of such renewal or extension options for such rentals, for such periods, and upon such terms and conditions as the authority shall determine and the granting of such purchase options for such prices and upon such terms and conditions as the authority shall determine;

(7) "Construct" means to acquire or build, in whole or in part, in such manner and by such method, including contracting therefor, and

if the latter, by negotiation or bids upon such terms and pursuant to such advertising, as the authority shall determine to be in the public interest and necessary under the circumstances existing at the time to accomplish the purposes of and authorities set forth in this chapter; and

(8) "Facilities" or "property" or "properties" means any real property, personal property, or mixed property of any and every kind that can be used, or that will be useful, to accomplish the purposes of, and powers set forth in, this chapter including, without limiting the generality of the foregoing, rights-of-way, roads, streets, utilities, materials, equipment, fixtures, machinery, furnishings, furniture, instrumentalities, and other real, personal, or mixed property of every kind.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 1; 1973, No. 426, § 1; 1981, No. 425, § 3; A.S.A. 1947, § 74-216.

14-362-103. Establishment of authorities.

(a)(1) Any two (2) or more municipalities and any two (2) or more contiguous counties, or any combination thereof, are authorized to create and establish one (1) or more authorities for the purpose of acquiring, equipping, constructing, maintaining, and operating regional airports.

(2) No county or municipality shall participate in such authority unless and until its governing body so provides and enters into an agreement with the other participating governing bodies, establishing the terms and conditions for the operation of the authority within the limitations provided in this chapter and such other laws of the State of Arkansas as may be applicable.

(b) To the extent that it is consistent with this chapter, the agreement shall specify the information provided for in § 25-20-104(c).

History. Acts 1968 (1st Ex. Sess.), No. 17, § 2; 1973, No. 426, § 2; A.S.A. 1947, § 74-217.

14-362-104. Authority as public corporation.

(a) Each authority when created, and the members thereof, shall constitute a public corporation and, as such, shall have perpetual succession, may contract and be contracted with, sue and be sued, and have and use a common seal.

(b) The exercise of the powers and performance of duties provided for in this chapter by each authority and its officers, agents, and employees are declared to be public and governmental functions, exercised for a public purpose and matters of public necessity, conferring upon each authority governmental immunity from suit in tort.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 3; A.S.A. 1947, § 74-218.

14-362-105. Appointment of board.

(a) Subject to such limitations as may be contained in the agreement provided for in § 14-362-103, the management and control of each authority and its property, operations, business, and affairs shall be lodged in a board of not less than six (6) nor more than twenty-four (24) persons who shall be appointed for terms of six (6) years each by the governing bodies participating in the authority.

(b) The number of members that each of the participating governing bodies is entitled to appoint to the board shall be set forth in the agreement provided for in § 14-362-103. However, each of the participating governing bodies shall be entitled to appoint at least one (1) member to the board.

(c) The initial members of the authority shall draw lots to provide for staggered terms as follows: One-third ($\frac{1}{3}$) of the members for six-year terms; one-third ($\frac{1}{3}$) of the members for four-year terms; and one-third ($\frac{1}{3}$) of the members for two-year terms. Thereafter, all appointments shall be for six-year terms.

(d) All members of the board of each authority shall be bona fide residents and qualified electors of the county or municipality which the members represent.

History. Acts 1968 (1st Ex. Sess.), No. 17, §§ 5, 7; A.S.A. 1947, §§ 74-220, 74-222.

14-362-106. Vacancy on board.

(a) If any member of an authority dies, resigns, is removed, or for any other reason ceases to be a member of the authority, the county court or the municipality which the member represented shall appoint another person to fill the unexpired portion of the term of the member.

(b) A member of the authority once qualified shall not be removed during his appointment except for cause by the governing body which appointed him and after a hearing before the governing body.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 6; A.S.A. 1947, § 74-221.

14-362-107. Compensation prohibited — Reimbursement of expenses.

(a) No member of the board of an authority shall receive any compensation, whether in form of salary, per diem allowance, or otherwise, for or in connection with his services as a member.

(b) Each member shall, however, be entitled to reimbursement by the authority for any necessary expenditures in connection with the performance of his general duties as a member.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 8; A.S.A. 1947, § 74-223.

14-362-108. Facilities authorized.

Each authority is authorized and empowered to acquire, equip, construct, maintain, and operate a regional airport or landing field and appurtenant facilities so located to best serve the region in which they are located.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 4; A.S.A. 1947, § 74-219.

14-362-109. Powers of authority generally.

Each authority is given power and authority as follows:

(1) To make and adopt all necessary bylaws, rules, and regulations for its organization and operations not inconsistent with law;

(2) To elect its own officers, to appoint committees, and to employ and fix the compensation for personnel necessary for its operation;

(3) To enter into contracts with any person, governmental department, firm, or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of acquiring, equipping, constructing, maintaining, improving, extending, financing, and operating a public airport to best serve the region in which it is located;

(4) To delegate any authority given to it by law to any of its officers, committees, agents, or employees;

(5) To apply for, receive, and use grants-in-aid, donations, and contributions from any source, including, but not limited to, the federal government, or any agency thereof, and the State of Arkansas, or any agency thereof, and to accept and use bequests, devises, gifts, and donations from any person, firm, or corporation;

(6) To acquire lands and hold title thereto in its own name;

(7) To acquire, own, hold, lease as lessor or as lessee, sell, encumber, dispose of, or otherwise deal in and with any facilities or real, personal, or mixed property, wherever located;

(8) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its airport properties and facilities in connection with the issuance of mortgage bonds;

(9) To raise funds by the issuance and sale of revenue bonds in the manner and according to the terms set forth in this chapter;

(10) To expend its funds in the execution of the powers and authorities given in this chapter and to invest and reinvest any of its funds pending need therefor;

(11) To apply for, receive, and use loans, grants, donations, technical assistance, and contributions from any regional or area commissions that may be established and any agency of the federal government or the State of Arkansas;

(12) To constitute the authority, or a committee thereof, as improvement district commissioners and to create and operate an improvement district, composed of the area encompassed within the jurisdictions of the participating governing bodies, upon the petition of persons claiming to be two-thirds ($\frac{2}{3}$) in value of the owners of real property in the area, as shown by the last county assessment. The improvement district shall be for the purpose of financing the construction, reconstruction, or repair of the regional airport and its facilities. The creation and operation of an improvement district shall, to the extent consistent with this chapter, be in accordance with the procedures established by the laws of this state for the creation and operation of municipal improvement districts;

(13) To enforce all rules, regulations, and statutes relating to its airports, including airport zoning regulations. In this connection, the authority is empowered and authorized to exercise the powers and privileges of the signatory parties under § 14-363-201 et seq. and the board of directors of the authority is designated by the signatory parties as the zoning board for the purposes and powers under these provisions;

(14) To levy and collect a tax on aviation fuel sold at an airport or airports of the authority as is provided for in §§ 14-364-101 and 14-364-102;

(15) To plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, and regulate its airports and auxiliary services and facilities, and to establish minimum building codes and regulations and to protect and police the airports of the authority, in cooperation with the law enforcement agencies and officers having jurisdiction in the area where the facilities of the authority are located;

(16) To levy and collect a tax, in an amount not to exceed one dollar (\$1.00) per passenger, on the boarding or disembarking of aircraft at the airport or airports of the authority. The tax shall be levied upon and collected from the passengers boarding or disembarking from the aircraft or the airlines operating the aircraft, and the authority is empowered to make reasonable classifications of passengers for this purpose; and

(17) To take such other action, not inconsistent with law, as may be necessary or desirable to carry out the powers and authorities conferred by this chapter and the intent and purposes of it.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 9; 1973, No. 426, §§ 3-6; A.S.A. 1947, § 74-224.

14-362-110. Issuance of revenue bonds — Authorization.

(a) Authorities are authorized to use any available revenues for the accomplishment of the purposes and the implementation of the powers authorized by this chapter, including the proceeds of revenue bonds issued from time to time pursuant to the provisions of this chapter, either alone or together with other available funds and revenues.

(b) The amount of each issue of bonds issued may be sufficient to pay:

(1) The costs of accomplishing the purposes for which it is being issued;

(2) The cost of issuing the bonds;

(3) The amount necessary for a reserve, if it is determined to be desirable in favorably marketing the bonds;

(4) The amount, if any, necessary to provide for debt service on the bonds until revenues for the payment thereof are available; and

(5) Any other costs and expenditures of whatever nature incidental to the accomplishment of the specified purposes.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 10; 1970 (Ex. Sess.), No. 63, § 1; 1973, No. 426, § 7; 1975, No. 225, § 3; 1981, No. 425, § 3; A.S.A. 1947, § 74-225.

14-362-111. Issuance of revenue bonds — Resolution of authority — Nature of bonds.

(a) The issuance of revenue bonds shall be by resolution of the authority.

(b) The bonds of each issue may:

(1) Be coupon bonds payable to bearer or may be registrable as to principal only or as to both principal and interest;

(2) Be in such form and denominations;

(3) Be made payable at such places within or without the state;

(4) Be issued in one (1) or more series;

(5) Bear such date or dates;

(6) Mature at such time or times, not exceeding forty (40) years from their respective dates;

(7) Bear interest at such rate or rates;

(8) Be payable in such medium of payment;

(9) Be subject to such terms of redemption; and

(10) Contain such terms, covenants, and conditions as the resolution authorizing their issuance may provide including, without limitation, those pertaining to:

(A) The custody and application of the proceeds of the bonds;

(B) The collection and disposition of revenues;

(C) The maintenance and investment of various funds and reserves;

(D) The imposition and maintenance of rates and charges for the use of airport facilities;

(E) The nature and extent of the security;

(F) The rights, duties, and obligations of the authority and the trustee for the holders and registered owners of the bonds; and

(G) The rights of the holders and registered owners of the bonds.

(c)(1) There may be successive bond issues for the purpose of financing the same project. There may also be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this chapter, with each successive issue to be authorized as provided by this chapter.

(2) Priority between and among issues and successive issues as to security, the pledge of revenues and lien on and security interest in the land, buildings, and facilities involved, may be controlled by the resolutions authorizing the issuance of bonds under this chapter.

(d) Subject to the provisions of this section and §§ 14-362-110 and 14-362-112 — 14-362-118, pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 10; 1970 (Ex. Sess.), No. 63, § 1; 1973, No. 426, § 7; 1975, No. 225, § 3; 1981, No. 425, § 3, A.S.A. 1947, § 74-225.

14-362-112. Issuance of revenue bonds — Indenture.

(a) The resolution authorizing the bonds may provide for the execution by the authority of an indenture which defines the rights of the holders and registered owners of the bonds and provides for the appointment of a trustee for the holders and registered owners of the bonds.

(b) Indenture may control the priority between successive issues and may contain any other terms, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to:

(1) The custody and application of the proceeds of the bonds;

(2) The collection and disposition of revenues;

(3) The maintenance of various funds and reserves;

(4) The imposition and maintenance of rates and charges for the use of airport facilities;

(5) The nature and extent of the security;

(6) The rights, duties, and obligations of the authority and the trustee; and

(7) The rights of the holders and registered owners of the bonds.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 10; 1970 (Ex. Sess.), No. 63, § 1; 1973, No. 426, § 7; 1975, No. 225, § 3; 1981, No. 425, § 3, A.S.A. 1947, § 74-225.

14-362-113. Issuance of revenue bonds — Price and manner sold.

The bonds may be sold for such price, including sale at a discount, and in such manner as the authority may determine by resolution.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 10; 1970 (Ex. Sess.), No. 63, § 1; 1973, No. 426, § 7; 1975, No. 225, § 3; 1981, No. 425, § 3; A.S.A. 1947, § 74-225.

14-362-114. Issuance of revenue bonds — Execution.

(a)(1) The bonds shall be executed by the manual or facsimile signature of the chairman and the manual signature of the secretary of the authority.

(2) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes.

(b) The coupons attached to the bonds may be executed by the facsimile signature of the chairman of the authority.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 10; 1970 (Ex. Sess.), No. 63, § 1; 1973, No. 426, § 7; 1975, No. 225, § 3; 1981, No. 425, § 3; A.S.A. 1947, § 74-225.

14-362-115. Issuance of revenue bonds — Obligation of authority.

(a) The revenue bonds issued under this chapter shall be obligations only of the authority and shall not be general obligations of any county or municipality.

(b)(1) In no event shall the revenue bonds constitute an indebtedness of any county or municipality within the meaning of any constitutional or statutory limitation.

(2) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this chapter and that it does not constitute an indebtedness of any county or municipality within any constitutional or statutory limitation.

(c) The principal of and interest on the bonds shall be secured by a pledge of and payable from all or any part of revenues derived from the use of facilities of the authority, including, without limitation:

(1) Revenues derived from rates and charges imposed and maintained for the use of facilities of the authority;

(2) Revenues derived from taxes levied under § 14-362-109(14) and (16); and

(3) Lease rentals under leases or payments under security agreements or other instruments entered into under this chapter.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 10; 1970 (Ex. Sess.), No. 63, § 1; 1973, No. 426, § 7; 1975, No. 225, § 3; 1981, No. 425, § 3; A.S.A. 1947, § 74-225.

14-362-116. Issuance of revenue bonds — Refunding bonds.

(a)(1) Revenue bonds may be issued under this chapter for the purpose of refunding any obligations issued under this chapter.

(2) The refunding bonds may be combined with bonds issued into a single issue.

(b)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement of them.

(c)(1) All refunding bonds issued under this chapter shall, in all respects, be authorized, issued, and secured in the manner provided for other bonds issued under this chapter and shall have all the attributes of these bonds.

(2) The resolution under which these refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded by them.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 10; 1970 (Ex. Sess.), No. 63, § 1; 1973, No. 426, § 7; 1975, No. 225, § 3; 1981, No. 425, § 3; A.S.A. 1947, § 74-225.

14-362-117. Issuance of revenue bonds — Mortgage lien.

(a) The resolution or indenture securing the bonds may impose a forecloseable mortgage lien upon or security interest in the facilities of the authority, or any portion thereof, and the extent of the mortgage lien or security interest may be controlled by the resolution or indenture including, without limitation, provisions pertaining to the release of all or part of the facilities subject to the mortgage lien or security interest in the event of successive issues of bonds.

(b) Subject to the terms, conditions, and restrictions contained in the resolution or indenture, any holder of any of the bonds, or of any coupon attached thereto, or a trustee on behalf of the holders may, either at law or in equity, enforce the mortgage lien or security interest and may, by proper suit, compel the performance of the duties of the officials of the authority set forth in this chapter and set forth in the resolution or indenture.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 10; 1970 (Ex. Sess.), No. 63, § 1; 1973, No. 426, § 7; 1975, No. 225, § 3; 1981, No. 425, § 3; A.S.A. 1947, § 74-225.

14-362-118. Issuance of revenue bonds — Default.

(a)(1) In the event of a default in the payment of the principal of or interest on any bonds issued under this chapter any court having jurisdiction may appoint a receiver to take charge of any facilities upon or in which there is a mortgage lien or security interest securing the bonds in default.

(2) The receiver shall have the power to operate and maintain the facilities in receivership and to charge and collect rates and rents sufficient to provide for the payment of any costs of receivership and operating expenses of the facilities in receivership and to apply the revenues derived from the facilities in receivership in conformity with this chapter and the resolution or indenture securing the bonds in default.

(3) When the default has been cured, the receivership shall be ended and the facilities returned to the authority.

(b) The relief provided for in this section shall be construed to be in addition and as supplemental to the remedies that may be provided for in the resolution or indenture securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from, mortgage lien on, and security interest in facilities as specified in and fixed by the resolution or indenture securing successive issues of bonds.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 10; 1970 (Ex. Sess.), No. 63, § 1; 1973, No. 426, § 7; 1975, No. 225, § 3; 1981, No. 425, § 3; A.S.A. 1947, § 74-225.

14-362-119. Agreements to obtain funds.

Each authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm, or corporation including the federal government, or any agency or subdivision thereof, containing such provisions, covenants, terms, and conditions as the authority may deem advisable.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 11; A.S.A. 1947, § 74-226.

14-362-120. Acquisition of property.

Whenever it shall be deemed necessary by an authority, in connection with the exercise of its powers conferred in this chapter, to take or acquire any lands, structures, buildings, or other rights, either in fee or as easements, for the purposes set forth in this chapter, the authority may purchase them directly or through its agents from the owners thereof, or failing to agree with the owners, the authority may exercise the power of eminent domain in the manner provided for condemnation proceedings under §§ 14-358-101, 14-358-102, and 14-360-102, and these purposes are declared to be public uses for which private property may be taken or damaged.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 12; A.S.A. 1947, § 74-227.

14-362-121. Exemption from taxation.

(a) Each authority shall be exempt from the payment of any taxes or fees to the state, or any subdivision thereof, or to any office or employee of the state, or of any subdivision thereof.

(b)(1) The property of each authority shall be exempt from all local and municipal taxes.

(2) Bonds, notes, debentures, and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 13; A.S.A. 1947, § 74-228.

14-362-122. Use of surplus funds.

(a) If an authority should realize a surplus, whether from operating the airport or leasing it for operation, over and above the amount required for the maintenance, improvement, and operation of the airport and for meeting all required payments on its obligations, it shall set aside the reserve for future operations, improvements, and contingencies as it shall deem proper and shall then apply the residue of the surplus, if any, to the payment of any recognized and established obligations not then due.

(b) After all the recognized and established obligations have been paid off and discharged in full, the authority shall, at the end of each fiscal year, set aside the reserve for future operations, improvements, and contingencies as prescribed in subsection (a) and then pay the residue of the surplus, if any, to the counties and municipalities in direct proportion to their financial contribution.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 15; A.S.A. 1947, § 74-230.

14-362-123. Public and private contributions.

(a) Contributions may be made to authorities from time to time by the counties and municipalities and persons, firms, or corporations that shall desire to do so.

(b) In order to afford maximum opportunities for contributions, the agreement provided for under § 14-362-103 may be treated as a cooperative agreement under the provisions of the Interlocal Cooperation Act, § 25-20-101 et seq., and may contain language enabling the agreement to be treated as a formal compact under §§ 14-165-201 — 14-165-204 in which case the authority shall hold title to property in its powers and capacity as a public corporation rather than as a com-

mission-trustee as provided in §§ 14-165-201 — 14-165-204, or may be treated as a less formal arrangement for the cooperative use of industrial development bond funds, all to the end that the counties and municipalities may contribute to the authority funds derived from general obligation bonds under the Arkansas Constitution, Amendments No. 13 and 49, from revenue bonds under §§ 14-164-201 — 14-164-206 and 14-164-208 — 14-164-223 from other available sources, and may contribute funds derived from a combination of these sources.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 16; A.S.A. 1947, § 74-231.

Publisher's Notes. Pursuant to Ark. Const., Amend. No. 62, § 11, the provi-

sions of Ark. Const., Amend. Nos. 13 and 49 are repealed insofar as they are inconsistent with the provisions of Ark. Const., Amend. No. 62.

14-362-124. Accounts and reports.

(a)(1) All funds received by an authority shall be deposited in such banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct.

(2)(A) Each authority shall keep strict account of all of its receipts and expenditures and shall each quarter make a report to the counties and municipalities which have made contributions.

(B)(i) The report shall contain an itemized account of its receipts and disbursements during the preceding quarter.

(ii) The report shall be made within sixty (60) days after the termination of the quarter.

(b)(1) Within sixty (60) days after the end of each fiscal year, each authority shall cause an annual audit to be made by an independent certified public accountant and shall file a copy of the resulting audit report with each of the governing bodies participating in the authority. This audit shall contain an itemized statement of its receipts and disbursements for the preceding year.

(2) The books, records, and accounts of each authority shall be subject to audit and examination by any proper public official or body in the manner provided by law.

(c) The agreement provided for in § 14-362-103 may also provide for each authority to furnish the participating governing bodies copies of its annual budget for examination and approval.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 16; A.S.A. 1947, § 74-231.

14-362-125. County and municipal authority.

(a) Counties and municipalities are authorized and empowered to appoint members of the authorities and to contribute to the cost of acquiring, constructing, equipping, maintaining, and operating the regional airports and appurtenant facilities.

(b) Counties or municipal corporations are authorized and empowered to transfer and convey to the authorities property of any kind acquired by the counties or municipal corporations for airport purposes.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 17; A.S.A. 1947, § 74-232.

14-362-126. Lease of facilities.

(a) Each authority may lease its airport and all or any part of its appurtenances and facilities to any available lessee at such rental and upon such terms and conditions as the authority shall deem proper.

(b) Leases shall be for some purpose associated with airport activities.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 14; A.S.A. 1947, § 74-229.

14-362-127. Sale of assets.

In the event a majority of the counties and municipalities contributing to the funds of an authority shall so determine, the authority shall make sale of all or any part of its properties and assets and distribute the proceeds among those counties and municipalities contributing to its funds.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 18; A.S.A. 1947, § 74-233.

14-362-128. Workers' compensation.

All employees of each authority who are eligible shall be deemed to be within the workers' compensation laws of Arkansas, and premiums on their compensation shall be paid by the authority as required by law.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 19; A.S.A. 1947, § 74-234.

Cross References. Workers' Compensation, § 11-9-101 et seq.

14-362-129. Existing authorities.

Any existing regional airport authority, de facto or de jure, previously created, or attempted to have been created, under the acts of Arkansas, or in any other manner created under color of law, having been created substantially in conformance with the provisions contained in this chapter is declared to be a body corporate and public as fully and to all intents and purposes as if created under this chapter. All acts and deeds heretofore done by any member or officer of the authority or of the governing bodies participating in the authority and any agreement between participating bodies creating the authority are cured, validated, and confirmed and shall have the full force and effect as if done pursuant to this chapter.

History. Acts 1968 (1st Ex. Sess.), No. 17, § 20; A.S.A. 1947, § 74-235.

CHAPTER 363

AIRPORT ZONING

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. ZONING BY CITIES.
3. UNITED STATES AIRPORTS.

RESEARCH REFERENCES

ALR. Zoning regulations limiting use of property near airport as taking of property. 18 ALR 4th 542.

Zoning regulations limiting use of property near airport as taking of property. 18 ALR 4th 542.

Airport operations or flight of aircraft as constituting taking or damaging of property. 22 ALR 4th 863.

Operations or flight of aircraft as constituting taking or damaging of property. 22 ALR 4th 863.

Damages resulting from temporary conditions incident to public improvements or repairs as compensable taking. 23 ALR 4th 674.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — ZONING BY CITIES

SECTION.

- 14-363-201. Title.
 14-363-202. Definitions.
 14-363-203. Penalties and enforcement.
 14-363-204. Promulgation, administra-

SECTION.

- tion, and enforcement of regulations.
- 14-363-205. Lawful nonconforming uses.
 14-363-206. Permits and variances.

SECTION.

14-363-207. Public hearings.

14-363-208. Judicial review.

Effective Dates. Acts 1941, No. 116, § 11; Mar. 6, 1941. Emergency clause provided: "It is ascertained and declared that airports in all sections of the State are needed in connection with the National Defense Program and that the use of said airports is and has been handicapped by lack of proper zoning of prop-

erty adjacent thereto; and that an emergency exists; and the existence of this emergency is hereby declared, and for the immediate preservation of the public peace, health and safety, this Act shall be in full force and effect immediately upon its passage and approval."

14-363-201. Title.

This subchapter shall be known and may be cited as the "Airport Zoning Enabling Act."

History. Acts 1941, No. 116, § 10; A.S.A. 1947, § 74-308.

14-363-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Airport" means any area of land usable for the landing and taking off of airplanes;

(2) A city is "served" by an airport if the airport is used for private flying or otherwise as a point of arrival or departure by air by persons residing or having their place of business in the city;

(3) An airport is of the "public utility class" if it is available to the general public for private flying or otherwise as a point of arrival or departure by air;

(4) "Person" means any individual, firm, copartnership, public or private corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof; and

(5) "Structure" means any object constructed or installed by man including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

History. Acts 1941, No. 116, § 1; A.S.A. 1947, § 74-301.

14-363-203. Penalties and enforcement.

(a) Penalties of fines and imprisonment for violations of any regulation, order, or ruling promulgated or made pursuant to this subchapter may be prescribed in any airport zoning regulations that may be promulgated under authority of this subchapter.

(b) In addition, any city, or board, commission, or agency thereof, authorized to administer and enforce zoning regulations promulgated pursuant to this subchapter may institute, in any court of competent

jurisdiction, an appropriate action or proceeding to prevent, restrain, correct, or abate any violation of zoning regulations, or any order or ruling made in connection with their administration or enforcement. The court shall adjudge then to the plaintiff such relief, by way of injunction, which may be mandatory or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to carry out and effectuate the purposes of this subchapter and of the regulations adopted and orders and rulings made pursuant to authority given in this section.

History. Acts 1941, No. 116, § 7;
A.S.A. 1947, § 74-307.

14-363-204. Promulgation, administration, and enforcement of regulations.

(a)(1) In order to protect airport approaches against obstruction, to protect the life and property of users of airports of the public utility class and of occupiers of land in their vicinity, to encourage and foster the use of airports, to safeguard the public investment therein, and to promote the public health, safety, and general welfare, all cities, of whatever class, are given the power to promulgate, administer, and enforce, in the manner and upon the conditions prescribed in this section, zoning regulations with respect to any airports of the public utility class by which they may be served, whether owned by them or not, dividing the area surrounding such airports into zones and limiting the height of all existing and future structures and objects of natural growth therein.

(2) Where an airport serves more than one (1) city, this power shall be vested in the commission vested with control and administration of the airport as provided by the statutes of the State of Arkansas and ordinances adopted pursuant to them.

(b)(1) In promulgating airport zoning regulations under authority of this subchapter, the city or agency thereof promulgating the regulations shall prescribe such zone and height limits as it considers reasonably necessary and calculated to insure airport approaches and turning space adequate for all flying operations expected to be conducted at the airport in question.

(2) The limits shall not be more exacting than is justified taking into account, among other considerations, the terrain in the vicinity of the airport, the height of existing structures and objects of natural growth above the level of the airport, and the possibility of lowering or removing existing obstructions.

(3) The area zones shall in no case extend more than five (5) miles from the airport.

(4) The zone and height limits shall in no case be more exacting than is necessary to conform to the current airport approach and turning space standards of the Federal Aviation Administration, or such other

agency of the federal government as may be concerned with the development of civil aeronautics.

(c)(1) Any city upon which this power is conferred may promulgate, administer, and enforce airport zoning regulations even though all or a part of the airport in question, or all or a part of the area to be zoned, is located outside its corporate limits and within the territory of another political subdivision.

(2) In all such cases, the political subdivision having within its territorial limits all or a portion of an airport, or all or a portion of its zones, but not vested with this power shall not promulgate any regulations of any kind that would conflict or interfere with the airport zoning regulations promulgated by the city authorized by this section to do so, or in any way hinder or interfere with the enforcement of this regulation.

(d) The governing body of any city may delegate the power to promulgate, administer, and enforce airport zoning regulations granted by this subchapter to any zoning board or planning commission under its jurisdiction and may, if it so desires, authorize one (1) agency to determine and promulgate the regulations and another to administer and enforce them.

History. Acts 1941, No. 116, § 2;
A.S.A. 1947, § 74-302.

CASE NOTES

Unreasonable Regulation.

Where there was no evidence to justify the conclusion that airport served a nearby city, or the inhabitants thereof, or that it was necessary to promote their safety or general welfare, a city ordinance

zoning lands adjacent to air strip was an unreasonable and arbitrary exercise of police power. *State ex rel. Publicity & Parks Comm'n v. Earl*, 233 Ark. 348, 345 S.W.2d 20 (1961).

14-363-205. Lawful nonconforming uses.

(a) In order to eliminate or mitigate existing hazards to landing and taking off at airports of the public utility class, to improve and make safer such airports, and to permit public use of the obstructed air space needed for such use, all cities granted the power to promulgate, administer, and enforce airport zoning regulations, by § 14-363-204, are given the power to acquire, by purchase, grant, or condemnation, such estate or interest in any structure or object of natural growth, existing at the time of adoption of zoning regulations pursuant to this subchapter, which does not conform to the height limitations of the regulations and for which a permit has been granted in accordance with § 14-363-206(a), as is necessary to permit lowering or removal of the structure or object of natural growth to the extent necessary to conform to the height limits.

(b) In cases of imminent danger to the health, safety, and general welfare of the public, the city shall have the power to take immediate steps as are necessary to remove the danger. A hearing shall thereafter

be held to determine what compensation, if any, should be made to the owner of the structure or object of natural growth causing the danger.

History. Acts 1941, No. 116, § 4;
A.S.A. 1947, § 74-304.

14-363-206. Permits and variances.

(a)(1) **PERMITS FOR CONTINUANCE OF NONCONFORMING USES.** The owner of any structure or object of natural growth existing at the time of the adoption of airport zoning regulations under authority of this subchapter which does not conform to the regulations shall be granted a permit authorizing continuance of the nonconforming use upon application made by him to the board, commission, or agency authorized to administer and enforce the regulations.

(2) If the application is not made within ninety (90) days of the effective date of the regulations in question, the board, commission, or agency shall, by appropriate action, compel the owner of the nonconforming structure or object of natural growth, at his own expense, to lower or remove the object to the extent necessary to conform to the regulations.

(b)(1)(A) **PERMITS FOR CHANGE AND REPAIR OF NONCONFORMING USES.** Before any existing nonconforming structure or object of natural growth for which a permit has been issued in accordance with subsection (a) may be altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the board, commission, or agency authorized to administer and enforce the regulations authorizing that change or repair.

(B)(i) No permit shall be granted that would permit the structure or object of natural growth in question to be made higher or become a greater hazard to air navigation than it was when the permit for its continuance was granted under subsection (a).

(ii) Where the structure or object of natural growth has been more than fifty percent (50%) torn down or destroyed, whether voluntarily or by act of God or otherwise, or has become more than fifty percent (50%) deteriorated or decayed, no permit shall be granted that would permit the structure or object of natural growth to exceed the applicable height limit prescribed by the zoning regulations. Instead, in all such cases of fifty percent (50%) destruction, deterioration, or decay, whether application is made for a permit for repair or not, the board or agency shall, by appropriate action, compel the owner of the nonconforming structure or object of natural growth, at his own expense, to lower or remove the object to the extent necessary to conform to the height limit.

(2) Except as indicated, all applications for permits for change or repair of nonconforming uses shall be granted.

(c) **PERMITS FOR ALL USES.** Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this subchapter, a

system for the granting of permits for all uses and structures within the zoned area may be established.

(d) **VARIANCES.** (1) Any person desiring to erect any structure or increase the height of any structure or permit the growth of any object of natural growth, in excess of height limits prescribed under authority of this subchapter, must apply to the board, commission, or agency authorized to consider these applications for a variance from the zoning regulations in question.

(2) Variances shall be allowed upon a showing of practical difficulty or unnecessary hardship, together with a showing that the structure or object of natural growth in question will not constitute an undue hazard to aircraft operations at the airport.

(e) **OBSTRUCTION MARKING AND LIGHTING.** In granting any application for any permit or variance in accordance with this section, the board, commission, or agency authorized to do so may, if it deems the action advisable to effectuate the purposes of this subchapter, so condition the permit or variance as to require the owner of the structure or object of natural growth in question to install and maintain obstruction marking or lighting.

(f) **EXHAUSTION OF REMEDIES.** No person desiring to continue a nonconforming use, to change or repair a nonconforming use, to take any action requiring a variance under subsection (d), or to take any other action covered by this section shall initiate any action in the courts unless and until he has exhausted the remedies provided by this section.

History. Acts 1941, No. 116, § 3;
A.S.A. 1947, § 74-303.

14-363-207. Public hearings.

(a) In all cases of applications for permits and variances as provided for in § 14-363-206, a public notice shall be published in the manner prescribed by law for publication of legal notices of a public hearing upon the application in question.

(b) A public hearing shall be held at which any person having an interest in the proceedings shall have an opportunity to offer evidence for or in opposition to the application in question.

(c) Written findings of fact and conclusions of law shall be made by the board, commission, or agency authorized to consider the application, based upon the evidence offered at the public hearing.

History. Acts 1941, No. 116, § 5;
A.S.A. 1947, § 74-305.

14-363-208. Judicial review.

(a) Any person aggrieved by any zoning regulations adopted pursuant to this subchapter, or by any order or ruling upon an application for a permit or variance, may within thirty (30) days appeal to the circuit court of the county within which the structure or object of natural growth in question is located.

(b) After such notice as the court shall direct to the parties interested, including all political subdivisions served by the airport affected and the city promulgating the zoning regulations in question, a hearing may be had before the court at an early and convenient time and place fixed by it.

(c)(1) The court may annul, affirm, or alter the regulations, order, or ruling complained of if it finds that the applicable rules of law so require.

(2) Any findings of fact made by the board, commission, or agency authorized by substantial evidence shall be accepted by the court as conclusive.

(d) Appeals from the circuit court shall be in accordance with the laws governing appeals.

History. Acts 1941, No. 116, § 6; 1985, No. 257, § 7; A.S.A. 1947, § 74-306.

SUBCHAPTER 3 — UNITED STATES AIRPORTS**SECTION.**

14-363-301. Definitions.

14-363-302. Penalty.

14-363-303. Promulgation and enforcement of regulations.

SECTION.

14-363-304. Lawful nonconforming uses.

14-363-305. Permits and variances.

14-363-306. Public hearings.

14-363-307. Judicial review.

Preambles. Acts 1955, No. 401 contained a preamble which read: "Whereas, flight hazards constitute a danger to the lives and property of persons living near United States airports; and

"Whereas, the unregulated use of land in the vicinity of the United States airports imperils the utility of such airports"

Effective Dates. Acts 1955, No. 401, § 9: Mar. 29, 1955. Emergency clause provided: "It has been found and is declared by the General Assembly of the

State of Arkansas that flight hazards exist which are a constant danger to occupants near United States airports, and that the utility of the airports is impaired by nonconforming structures and that the enactment of the foregoing provisions will preclude the existing conditions. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

14-363-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "United States airport" means any United States airport owned or operated by the federal government, any part of which is located within the State of Arkansas;

(2) "County" means a county within whose borders there is any part of a United States airport;

(3) "City" means any city whose territorial limits are within fifty thousand feet (50,000') from any United States airport;

(4) "Person" means any individual, firm, copartnership, public or private corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof; and

(5) "Structure" means any object constructed or installed by man including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

History. Acts 1955, No. 401, § 1;
A.S.A. 1947, § 74-313.

14-363-302. Penalty.

(a) Any person who violates a provision of this subchapter or a regulation promulgated pursuant thereto shall be fined in any sum not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000).

(b) Each day a violation continues is a separate offense.

History. Acts 1955, No. 401, § 7;
A.S.A. 1947, § 74-319.

14-363-303. Promulgation and enforcement of regulations.

(a) All counties and cities of any class and towns are empowered to promulgate and enforce zoning regulations with respect to United States airports in the manner provided in this section by dividing the area surrounding the airports into zones and limiting the height of all existing and future structures and objects of natural growth therein.

(b)(1) Cities and towns within fifty thousand feet (50,000') of a United States airport are empowered to promulgate and enforce zoning regulations within their respective city limits only.

(2) Counties are empowered to promulgate and enforce zoning regulations in the area thereof within fifty thousand feet (50,000') of a United States airport which is not within the limits of a city or town.

(c) Zoning regulations promulgated for the benefit of United States airports shall conform to and be consistent with United States Air Force standards and specifications and such waivers of the zoning regulations as may be made by the United States Government.

(d) The governing body of any county, city, or town may delegate the power to promulgate, administer, and enforce airport zoning regulations granted by this subchapter to any zoning board or planning commission under its jurisdiction, and it may authorize one (1) agency to promulgate the regulations and another to administer and enforce them.

(e)(1) In counties not having a county planning board, the board shall promulgate the regulations contemplated in this section in accordance with the procedure prescribed by §§ 14-17-201, 14-17-202, 14-17-204 — 14-17-209, and 14-17-211.

(2) In counties not having a county planning board, the county judge, along with four (4) residents of the county to be selected by the judge, shall compose a board to be known as the "county airport planning board." This board shall promulgate the regulations contemplated in accordance with the procedure prescribed in §§ 14-17-201, 14-17-202, 14-17-204 — 14-17-209, and 14-17-211.

(f) A county, city, or town is entitled to the remedy of either affirmative or negative injunction to enforce its regulations.

History. Acts 1955, No. 401, §§ 2, 7;
1985, No. 257, § 8; A.S.A. 1947,
§§ 74-314, 74-319.

14-363-304. Lawful nonconforming uses.

(a) In order to eliminate or mitigate existing hazards to landing and taking off at United States airports, to improve and make safer such airports, and to permit use of the obstructed air space needed, all counties, cities, towns, or any agency thereof, granted the power to promulgate and enforce airport zoning regulations are empowered to acquire, by purchase, grant, or condemnation, such estate or interest in any structure or object of natural growth, existing at the time of adoption of zoning regulations pursuant to this subchapter which does not conform to the height limitations of the regulations and for which no permit has been granted in accordance with § 14-363-305, as is necessary to permit lowering or removal of the structure or object of natural growth to the extent necessary to conform to the height limits.

(b) In cases of imminent danger to the health, safety, and general welfare of the public, the county, city, or town is empowered to take such immediate steps as are necessary to remove the danger. A hearing shall thereafter be held to determine what compensation, if any, should be made to the owner of the structure or object of natural growth causing the danger.

History. Acts 1955, No. 401, § 4;
A.S.A. 1947, § 74-316.

14-363-305. Permits and variances.

(a)(1) **PERMITS FOR CONTINUANCE OF NONCONFORMING USES.** The owner of any structure or object of natural growth existing at the time of the adoption of airport zoning regulations under authority of this subchapter which does not conform to the regulations may be granted a permit authorizing continuance of the nonconforming use upon application made by him to the board, commission, or agency authorized to administer and enforce the regulations.

(2) If the application is not made within ninety (90) days of the effective date of the regulations in question, the board, commission, or agency may, by appropriate action, compel the owner of the nonconforming structure or object of natural growth to lower or remove the object to the extent necessary to conform to the regulations.

(b) **PERMITS FOR CHANGE AND REPAIR OF NONCONFORMING USES.**

(1)(A) Before any existing nonconforming structure or object of natural growth for which a permit has been issued in accordance with subsection (a) of this section may be altered, repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the board, commission, or agency authorized to administer and enforce the regulations authorizing the change or repair.

(B)(i) No permit shall be granted that would permit the structure or object of natural growth in question to be made higher or become a greater hazard to air navigation than it was when the permit for its continuance was granted under subsection (a) of this section.

(ii) Where the structure or object of natural growth has been more than fifty percent (50%) torn down or destroyed, whether voluntarily, by act of God, or otherwise, or has become more than fifty percent (50%) deteriorated or decayed, no permit shall be granted that would permit the structure or object of natural growth to exceed the applicable height limit prescribed by the zoning regulations; instead, in all cases of fifty percent (50%) destruction, deterioration, or decay, whether application is made for a permit for repair or not, the board or agency shall by appropriate action compel the owner of the nonconforming structure or object of natural growth to lower or remove the object to the extent necessary to conform to the height limit.

(2) Except as indicated, all applications for permits for change or repair of nonconforming uses shall be granted.

(c) **PERMITS FOR ALL USES.** Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this subchapter, a system for the granting of permits for all uses and structures within the zoned area may be established.

(d)(1) **VARIANCES.** Any person desiring to erect any structure or increase the height of any structure or permit the growth of any object of natural growth, in excess of height limits prescribed under authority of this subchapter, must apply to the board, commission, or agency authorized to consider these applications for a variance from the zoning regulations in question.

(2) Variances shall be allowed upon a showing of practical difficulty or unnecessary hardship, together with a showing that the structure or object of natural growth in question will not constitute an undue hazard to aircraft operations at the airport.

(e) **OBSTRUCTION MARKING AND LIGHTING.** In granting any application for any permit or variance in accordance with this section, the board, commission, or agency authorized to do so may, if it deems the action advisable to effectuate the purposes of this subchapter, so condition the permit or variance as to require the owner of the structure or object of natural growth in question to install and maintain obstruction marking or lighting.

(f) **EXHAUSTION OF REMEDIES.** No person desiring to continue a nonconforming use, to change or repair a nonconforming use, to take any action requiring a variance under subsection (d) of this section, or to take any other action covered by this section shall initiate any action in the courts unless and until he has exhausted the remedies provided by this section.

History. Acts 1955, No. 401, § 3; **Meaning of "this act".** See note to A.S.A. 1947, § 74-315. § 14-363-301.

14-363-306. Public hearings.

(a) In all cases of applications for permits and variances as provided for in § 14-363-305, a public notice shall be published in the manner prescribed by law for publication of legal notices of a public hearing upon the application in question.

(b) A public hearing shall be held at which any person having an interest in the proceedings shall have an opportunity to offer evidence for or in opposition to the application in question.

(c) Written findings of fact and conclusions of law shall be made by the board, commission, or agency authorized to consider the application, based upon the evidence offered at the public hearing.

History. Acts 1955, No. 401, § 5; A.S.A. 1947, § 74-317.

14-363-307. Judicial review.

(a) Any persons aggrieved by any zoning regulations adopted pursuant to this subchapter or by any order or ruling upon an application for a permit or variance may, within thirty (30) days thereof, appeal to the circuit court of the county within which the structure or object of natural growth in question is located.

(b) After such notice as the court shall direct to the parties interested, including all political subdivisions affected, a hearing shall be held before the court at a time and place fixed by it.

(c)(1) By its decree, the court may annul, affirm, or alter the regulations, order, or ruling complained of if it finds that the applicable rules of law so require.

(2) In all cases, any findings of fact that may have been made by the board, commission, or agency founded upon substantial evidence shall be accepted by the courts as conclusive.

History. Acts 1955, No. 401, § 6;
A.S.A. 1947, § 74-318.

CHAPTER 364

TAX ON AVIATION FUEL

SECTION.

14-364-101. Levy of tax — Exception.

14-364-102. Use of revenues.

14-364-101. Levy of tax — Exception.

(a) The airport commission of any city or county, by and with the approval of the governing body of the city or county, may, by a majority vote of the membership of the commission, levy and collect a tax of one cent (1¢) per gallon on all aviation fuel sold at the airport operated and managed by the commission.

(b) This section and § 14-364-102 shall not apply to commercial scheduled airline carriers or agricultural flying.

History. Acts 1965, No. 159, § 1;
A.S.A. 1947, § 74-212.

Cross References. Levy of tax by regional airport authority, § 14-362-109.

14-364-102. Use of revenues.

All revenues derived from a tax levied upon aviation fuel as authorized in § 14-364-101 shall be set aside and used for the operation and maintenance of the airport for the construction of facilities at the airport or to retire bonds issued for the purchase or the improvement of the airport.

History. Acts 1965, No. 159, § 2;
A.S.A. 1947, § 74-213.

CHAPTERS 365-374

[Reserved]

***SUBTITLE 23. AIRPORT FACILITIES IMPROVEMENT
DISTRICTS*****CHAPTERS 375-384**

[Reserved]

SUBTITLE 24. FENCING AND LIVESTOCK DISTRICTS**CHAPTER 385****GENERAL PROVISIONS**

[Reserved]

CHAPTER 386**FENCING DISTRICTS****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. SMALL STOCK.
3. ADDITIONS OR CONSOLIDATIONS.
4. ENCLOSURE BY OTHER DISTRICTS.
5. STATUS AND FUNDING.
6. STOCK AT LARGE.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

- 14-386-101. Definition.
- 14-386-102. Penalty for leaving gates open, etc. — Damages.
- 14-386-103. Penalty for stock running at large — Damages.
- 14-386-104. Establishment of fencing districts.
- 14-386-105. Appointment of fencing board, etc.
- 14-386-106. Appointment of collector and treasurer, etc.
- 14-386-107. Plans for building fence.
- 14-386-108. Openings and gates required.
- 14-386-109. No boundary fences for adjoining districts.
- 14-386-110. Removal of fence in adjoining districts.

SECTION.

- 14-386-111. Use of existing fences.
- 14-386-112. Navigable stream as lawful fence.
- 14-386-113. Assessment not required.
- 14-386-114. Railroads subject to tax.
- 14-386-115. Order of assessment.
- 14-386-116. Publication of order — Contest.
- 14-386-117. Delivery of assessment to collector.
- 14-386-118. Notice of assessment.
- 14-386-119. Proceedings upon nonpayment of assessment.
- 14-386-120. Certifying delinquencies in no-fence district.
- 14-386-121. Annual repairs.
- 14-386-122. Control of fence construction.

Effective Dates. Acts 1891, No. 158, § 28: effective on passage.

Acts 1893, No. 13, § 2: effective on passage.

Acts 1893, No. 17, § 2: effective on passage.

Acts 1897 (Ex. Sess.), No. 28, § 8: effective on passage.

Acts 1901, No. 153, § 2: effective on passage.

Acts 1911, No. 238, § 4: effective on passage.

Effective Dates. Acts 1929, No. 15, § 4: approved Feb. 6, 1929. Emergency clause provided: "It is hereby ascertained and declared that until this act takes effect numerous fencing districts will maintain portions of their boundary fences at considerable expenses though no necessity therefor exists and that the law with reference to the enforcement of penalties provided for violation of fencing district or no fence districts acts and with reference to the rights and remedies of persons suffering from depredation of animals in fencing districts or no fence districts will be in an unsettled condition and that this act is necessary for the immediate preservation of public peace, health and safety. "An emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage."

Acts 1933, No. 147, § 3: Mar. 24, 1933. Emergency clause provided: "Whereas, the present method of collecting delinquent assessments in no fence districts is so ineffective that many districts are being threatened with receiverships an emergency is hereby declared and this act

being necessary for the preservation of the public peace, health and safety it shall be in full force and effect from and after its passage and approval."

Acts 1941, No. 466, § 4: became law without Governor's signature, Apr. 3, 1941. Emergency clause provided: "It is hereby determined and declared that there are many no fence districts in this state which adjoin each other; and that except for the passage of this act, the property owners of this state will have to unnecessarily expend large sums of money in the construction and maintenance of boundary fences which are not needed. An emergency is, therefore, declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1943, No. 163, § 2: Mar. 4, 1943. Emergency clause provided: "It is hereby determined and declared that there are many no fence districts in this State which adjoin each other; and that except for the passage of this act, the property owners of this State will have to unnecessarily expend large sums of money in the construction and maintenance of boundary fences which are not needed. An emergency is, therefore, declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

14-386-101. Definition.

As used in this chapter, unless the context otherwise requires, "land" has the same meaning and signification as are attached to the words "real property" in the act providing for the collection of state, county, and city revenue.

History. Acts 1891, No. 158, § 8, p. 272; C. & M. Dig., § 4666; Pope's Dig., § 5754; A.S.A. 1947, § 78-1310.

14-386-102. Penalty for leaving gates open, etc. — Damages.

(a) Any person who shall willfully leave open or unfastened any gate, bars, or other passway leading into a fencing district, or any person passing through a gate, bars, or other passway and finding the gates, bars, or other passway opened or unfastened and shall fail to close or fasten them, or who shall tear down the fence, or any part of it, or in any manner injure or destroy it, shall be guilty of a misdemeanor.

(b) Upon conviction, an offender shall be punished by a fine in any sum not less than one dollar (\$1.00) nor more than fifty dollars (\$50.00) and, in addition thereto, shall be liable to:

(1) The fencing board of the district so injured for double the amount of damages done to the fence; and

(2) Any person in double the amount of any damages caused him by such action.

History. Acts 1891, No. 158, § 27, p. 272; 1901, No. 153, § 1, p. 292; C. & M. Dig., § 4685; Pope's Dig., § 5774; A.S.A. 1947, § 78-1329.

14-386-103. Penalty for stock running at large — Damages.

(a) After any fencing district has been enclosed by a good and lawful fence, it shall be unlawful for any person who is the owner, or who has control of any kind of stock, to let them run at large in the district.

(b)(1) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor.

(2) Upon conviction, an offender shall be fined in any sum not less than one (\$1.00) or more than fifty dollars (\$50.00) and, in addition to the fine, shall be liable for double the amount of any damages that any person may sustain by reason of the stock running at large in the district, to be recovered by action before any court having competent jurisdiction.

(c) This section shall not prohibit any person from fencing his lands, or any part of them, separately and pasturing them.

History. Acts 1891, No. 158, § 26, p. 272; C. & M. Dig., § 4684; Pope's Dig., § 5772; A.S.A. 1947, § 78-1328.

CASE NOTES**ANALYSIS**

Enclosure.
Liability.
Presumptions.

Enclosure.

The construction of a fence around a fencing district is required only to the extent essential to the protection of the district from stock running at large, and

where a fencing district is bounded on all sides by an adjacent fencing district already established, the construction of a fence is not required. *Cranor v. Jenkins*, 149 Ark. 154, 231 S.W. 883 (1921).

Liability.

Where fencing district is established and fence built, any person within the district is liable in damages for permitting animals to run at large even though law-

ful fence is not maintained and gates are down. *Hill v. Gibson*, 107 Ark. 130, 154 S.W. 203 (1913).

larity of the formation of the district is presumed. *Skiles v. State*, 150 Ark. 300, 234 S.W. 721 (1921).

Presumptions.

In a prosecution of violations, the regu-

14-386-104. Establishment of fencing districts.

(a) The county court of any county in the state is authorized, empowered, and required, on the petition of two-thirds ($\frac{2}{3}$) of the landowners of any township, or any fractional part of them contiguous to each other, to form a fencing district and establish the boundaries of it in accordance with the petition.

(b) Each district shall be designated by number.

History. Acts 1891, No. 158, § 1, p. 272; 1893, No. 18, § 1, p. 22; A.S.A. 1947, § 78-1301.

14-386-105. Appointment of fencing board, etc.

(a)(1)(A) Immediately upon the formation of a fencing district, the county court shall appoint three (3) persons, and owners of land in it who shall compose the fencing board of the district.

(B) If the petition for the formation of such a district names the persons to be appointed as the board, the court shall appoint the persons named in the petition.

(2)(A)(i) Each member of the board shall, within ten (10) days after his appointment, take the oath of office required by Arkansas Constitution, Article 19, § 20 and that he will not, either directly or indirectly, be interested in any contract made by the board.

(ii) The oath shall be filed in the office of the county clerk.

(B) If any member of the board shall fail to take the oath and file it in the office of the clerk within the time allowed in this section, he shall be taken to have declined the office and the court shall at once appoint another person having the like qualifications in his place, who shall take and file the oath of office within ten (10) days after his appointment.

(b)(1) The board shall elect one of their number chairman.

(2)(A) Vacancies that may occur after the board shall have organized shall be filled by appointments made by the remaining members.

(B) If all the places on the board become vacant, or if those appointed shall, after qualification, refuse or neglect to act, new members shall be appointed by the court as in the first instance.

(c)(1) A majority of the board shall constitute a quorum for the transaction of business and the performance of the duties enjoined by this subchapter.

(2) The members of the board shall receive no compensation for their services.

History. Acts 1891, No. 158, §§ 2-6, p. Dig., §§ 5746-5750; A.S.A. 1947, §§ 78-272; C. & M. Dig., §§ 4658-4662; Pope's 1302 — 78-1306.

14-386-106. Appointment of collector and treasurer, etc.

(a)(1)(A) The fencing board shall appoint the collector and treasurer of the district, who shall take the oath of office required by § 14-386-105.

(B) The collector and treasurer shall execute bond to the chairman of the board, each in a sum at least equal to twice the amount of moneys which will probably come to their hands, with good and sufficient security, to be approved by the board, conditioned that:

- (i) They will faithfully discharge the duties of their office; and
- (ii) They will account for and pay over all moneys that may come to their hands according to law and the order of the board for the district for which they were appointed.

(2) The same person may be treasurer or collector of one (1) or more districts of the county, but the moneys of the different districts shall be kept separately.

(b)(1) The collector shall pay over to the treasurer on the first of each month all moneys received by him, deducting from them three percent (3%) for his services, and shall take duplicate receipts for them, one (1) of which he shall file with the board.

(2)(A) The treasurer shall pay out no moneys save upon the order of the board and upon a warrant signed by the chairman of it.

(B) The treasurer shall be allowed a commission of one percent (1%) on all sums by him lawfully paid out.

History. Acts 1891, No. 158, §§ 21-24, Dig., §§ 5768-5771; A.S.A. 1947, p. 272; C. & M. Dig., §§ 4680-4683; Pope's §§ 78-1324 — 78-1327.

14-386-107. Plans for building fence.

(a)(1) Immediately after their organization, fencing boards shall form plans for the building of a good and lawful fence and all necessary gates to enclose and protect the fencing district and shall procure estimates of the cost of it.

(2) For this purpose, the board may employ such engineers, surveyors, and other agents as may be needed, and may provide for their compensation, which, with all other necessary expenditures, shall be taken as a part of the cost of the fencing.

(b) If for any cause the improvement shall not be made, the cost shall be a charge upon the land in the district and shall be raised and paid by assessment in the manner prescribed in § 14-386-115.

History. Acts 1891, No. 158, § 7, p. 272; C. & M. Dig., § 4663; Pope's Dig., § 5751; A.S.A. 1947, § 78-1307.

CASE NOTES

Cited: Little Rock & Ft. S.R.R. v. Stiewel v. Fencing Bd., 71 Ark. 17, 70 Huggins, 64 Ark. 432, 43 S.W. 145 (1897); S.W. 308, 71 S.W. 247 (1902).

14-386-108. Openings and gates required.

A fencing board shall provide for openings and gates with good and convenient fastenings on all public highways or necessary roads, and at such other points along the enclosing fence as they may deem advisable, and shall have substantial blocks or stiles placed adjacent to the roads on each side of every gate or opening.

History. Acts 1891, No. 158, § 12, p. § 4664; Pope's Dig., § 5752; A.S.A. 1947, 272; 1893, No. 17, § 1, p. 21; C. & M. Dig., § 78-1309.

14-386-109. No boundary fences for adjoining districts.

(a) In all cases where two (2) or more fence or no-fence districts adjoin at one (1) or more points, it shall be unnecessary for the districts to construct or maintain a boundary fence at the points where the districts adjoin each other. The terms "fence district" and "no-fence district" shall mean any territory within which the running at large of stock or animals of any kind is prohibited, regardless of whether it is termed a fence district, a no-fence district, a stock law district, or any other name.

(b) In all such cases, all of the provisions of the law under which each of the adjoining districts is operating shall be applicable to the districts, despite the fact that there is no boundary fence at the point where the districts adjoin.

History. Acts 1941, No. 466, §§ 1, 2; 1943, No. 163, § 1; A.S.A. 1947, § 78-1356.

14-386-110. Removal of fence in adjoining districts.

(a) In any fencing district or no-fence district created, whether under a special act or the general laws of the State of Arkansas, where any such district shall be adjoined either before or after the construction of its boundary fence by any other fencing or no-fence district in the same or any other county, if a boundary fence shall have been constructed along such portion of the district's boundary prior to the organization of the other district, the commissioner or directors of the district shall have the right to tear down and remove the fence at all points where it shall be adjacent or contiguous to the other district and may dispose of the materials in the fence as, in their judgment, they may deem to be the best interest of the district.

(b) The penalties provided for allowing animals to run at large and the remedies offered for depredation of such animals and any and all other provisions of fencing districts or no-fence districts laws shall

remain in full force and effect and shall not be deemed to be in any manner abrogated or nullified by reason of the fact that there may be no fence along the line between any two (2) fencing or no-fence districts.

History. Acts 1929, No. 15, §§ 1, 2; Pope's Dig., §§ 5784, 5785; A.S.A. 1947, §§ 78-1354, 78-1355.

14-386-111. Use of existing fences.

(a) If in the construction of the fence of a fencing district any owner of land in the district shall be found to have built a fence which may be profitably made a part of the general fence for the district, being as good as that required by the system determined upon by the fencing board, the board shall appraise the value of the fence made by the owner and shall allow its value as a set-off against the assessment against his land.

(b)(1) In case the fence made by the owner shall be found to fail to meet the required standard, the board may allow the owner the value of the materials of it, insofar as they may be profitably used in perfecting the fence of the district, as a set-off against the assessment against his land.

(2) In such a case, the board shall issue to the owner a certificate showing the amount of the set-off allowed, which certificate shall be received by the collector for the amount named in it in lieu of money charged against the holder's land.

History. Acts 1891, No. 158, § 17, p. 272; C. & M. Dig., § 4676; Pope's Dig., § 5764; A.S.A. 1947, § 78-1318.

14-386-112. Navigable stream as lawful fence.

Where the boundary of any fencing district shall lie along the bank of a navigable stream, and any other watercourse flows into the stream across the boundary with such force as to render it impracticable to maintain watergaps, the distance from bank to bank of the watercourse shall be deemed and held to be a good and lawful fence as part of the fence enclosing the district.

History. Acts 1897 (Ex. Sess.), No. 28, § 7, p. 78; C. & M. Dig., § 4692; Pope's Dig., § 5781; A.S.A. 1947, § 78-1353.

14-386-113. Assessment not required.

If each landowner in a fencing district shall build and maintain his proportionate share of the fence required to make a good and lawful fence for the district in accordance with the plan determined upon by the fencing board, the assessment provided for in this chapter need not be made or collected.

History. Acts 1891, No. 158, § 17, p. 272; C. & M. Dig., § 4676; Pope's Dig., § 5764; A.S.A. 1947, § 78-1318.

14-386-114. Railroads subject to tax.

(a) Every railroad company, foreign or domestic, doing business in this state and having any part of its real property situated wholly or in part in any fencing district formed in this state, whether it is formed under general or special law, shall be required to pay taxes for the benefit of any such district.

(b) The tax required in this section shall be assessed by the county court, which assessment shall be based upon the last assessment made by the Assessment Coordination Division of the Arkansas Public Service Commission, and each parcel of land or right-of-way owned by the railroad, and situated in any such district, shall be subject to the tax.

History. Acts 1911, No. 238, §§ 1, 2; C. & M. Dig., §§ 4668, 4669; Pope's Dig., §§ 5756, 5757; A.S.A. 1947, §§ 78-1319, 78-1320.

14-386-115. Order of assessment.

(a)(1) As soon as the board shall have formed its plan and shall have ascertained the cost of the fencing, it shall report it to the county court, which shall at once, by order, assess the cost upon the land in the district, assessing each parcel of land according to its value as shown by the last county assessment on file in the office of the county clerk.

(2) In case of land owned by railroad companies, the assessment shall be made according to the value of the land as shown by the last assessment made by the Assessment Coordination Division of the Arkansas Public Service Commission.

(b)(1) If the estimated cost of the fencing shall exceed one percent (1%) of the assessed value of the land as indicated, then it shall be provided by the order that the assessment shall be paid in successive annual installments, so that no assessment shall in any one (1) year exceed one percent (1%) of the assessed value of the land for the fencing.

(2) The order shall fix the day in each year when the assessment for the year shall be paid, and the day fixed for the payment of the first installment shall not be later than sixty (60) days from the date of the order making the assessment.

(c) The order of the county court assessing the cost of fencing may be in the following form:

"Whereas, Two-thirds of the landowners of Fencing District No. . . . have petitioned for the formation of said district, and,

"Whereas, Said district has been formed and established by orders of this court on said petition and a fencing board for said district have been appointed and have qualified and have reported to the court an estimate of the cost of fencing said district, and,

"Whereas, The estimated cost of said fencing is dollars, amounting to percent of the assessed value of said real property; therefore,

"It is now ordered and adjudged by the court that all land situated in said district be assessed at the rate of percent upon the dollar of the said valuation, as the same appears by the assessment made by the assessor of this county, now on file in the county clerk's office, which assessment shall be paid on or before the day of, 19. . . ., and such assessment shall be a charge against and lien upon the lands in said district from the date of said order."

History. Acts 1891, No. 158, §§ 9, 10, 4672; Pope's Dig., §§ 5755, 5758, 5760; 13, p. 272; 1893, No. 18, § 1, p. 22; 1911, A.S.A. 1947, §§ 78-1311, 78-1312, No. 238, § 3; C. & M. Dig., §§ 4667, 4670, 78-1314.

CASE NOTES

Presumption of Regularity.

A complaint which sought to collect an assessment of a fencing district which alleged that the assessment was levied by the board of commissioners and approved by the county court was not defective in

failing to allege that the county court made the assessment, as it would be presumed, in the absence of a contrary showing, that the assessment was regularly made. *Eagle v. Board of Comm'rs*, 91 Ark. 378, 121 S.W. 340 (1909).

14-386-116. Publication of order — Contest.

(a) Within seven (7) days from the making of the order mentioned in § 14-386-115, the county clerk shall publish a copy of it in some newspaper published in the county one (1) time if a newspaper is published in the county; and if not, then by posting the copy at the courthouse door, and by posting not less than ten (10) copies of it in the district.

(b)(1) Anyone who may feel aggrieved by the order may object to the assessment.

(2) A person shall commence legal proceedings for the purpose of trying the validity of the assessment within twenty (20) days after the date of publication, or else he shall be forever barred in all courts of law or equity from questioning the validity of the assessment and the lien created by it.

History. Acts 1891, No. 158, § 14, p. 272; C. & M. Dig., § 4673; Pope's Dig., § 5761; A.S.A. 1947, § 78-1315.

14-386-117. Delivery of assessment to collector.

- (a) Immediately after making the order, the county clerk shall:
- (1) Make out, at the expense of the fencing district, a copy of so much of the last assessment made by the county assessor as contains the description and valuation of the land situated in the district;
 - (2) Extend against each parcel of land on it the assessment made; and
 - (3) Deliver it, with his warrant attached to it, to the collector of the district within thirty (30) days from the making of the order.
- (b) The warrant may be in the following form:
- "State of Arkansas to the Collector of Fencing District No. :
- "You are hereby commanded to collect from the owners of land described in the annexed list the assessments thereon extended and to pay them to the treasurer of the district within sixty (60) days from this date.
- "Witness my hand and official seal on this day of , 19.
-"

History. Acts 1891, No. 158, § 15, p. 272; C. & M. Dig., § 4674; Pope's Dig., § 5762; A.S.A. 1947, § 78-1316.

14-386-118. Notice of assessment.

- (a) The collector of a fencing district shall, immediately upon the receipt of the tax list, cause to be published in some newspaper published in the county, if there is one, a notice which may be in the following form:

"SPECIAL ASSESSMENT

"The tax book for the collection of the special assessment upon the land in Fencing District No. has been placed in my hands. All owners of land lying in this district are required to pay their assessment to me within thirty days from this date. If such payment is not made, action will be commenced at the end of that time for collection of said assessments and for legal penalties and costs."

"Given under my hand this day of , 19.

., Collector."

(b) The notice shall also be published by posting ten (10) copies of it in the district.

History. Acts 1891, No. 158, § 16, p. 272; C. & M. Dig., § 4675; Pope's Dig., § 5763; A.S.A. 1947, § 78-1317.

14-386-119. Proceedings upon nonpayment of assessment.

(a) If any assessment made under this subchapter shall not be paid within the time mentioned in the notice published by the collector of a fencing district:

(1) The collector shall add to it a penalty of twenty percent (20%) and shall at once return a list of the property on which the assessments have not been paid to the fencing board, as delinquent;

(2)(A) The board shall straightway cause a complaint in equity to be filed in the court having jurisdiction of suits for the enforcement of liens upon real property, for the condemnation and sale of such delinquent land for the payment of the assessment, penalty, and costs of suit.

(B) In the complaint, it shall not be necessary to state more than the fact of the assessment and the nonpayment of it within the time required by law, without any other further statement of any step required to be taken by the court, the board, or any officer whatever, concluding with a request that the delinquent lands be charged with the amount of the assessment, penalty, and costs of suit and be condemned and sold for the payment of it.

(b)(1) It shall not be necessary to exhibit with the complaint any copy of any order of court or other document or paper connected with the assessment and collection of moneys assessed under this subchapter; and

(2) It shall be no objection to any suit brought for this purpose that the lands of two (2) or more owners are joined in the same proceeding, as such a suit may be brought against one (1) or more owners.

(c)(1) In these suits the same service shall be had on defendants, and the case shall proceed in the same manner as is provided by law in cases or suits for the collection of assessments for local improvements in cities of the first class, insofar as these proceedings can be made applicable.

(2) In case of sale, the owner shall have the same right of redemption by paying the amount of the purchase money and all assessments to the purchaser and twenty percent (20%) on it, within one (1) year from the date of sale.

History. Acts 1891, No. 158, §§ 18-20, Dig., §§ 5765-5767; A.S.A. 1947, §§ 78-p. 272; C. & M. Dig., §§ 4677-4679; Pope's 1321 — 78-1323.

CASE NOTES**ANALYSIS**

Attorney's fees.
Complaint.
Foreclosure.
Reimbursement.

Attorney's Fees.

No attorney's fee is to be allowed in a

suit to enforce an assessment. *Eagle v. Board of Comm'rs*, 91 Ark. 378, 121 S.W. 340 (1909).

Complaint.

A complaint which sought to collect an assessment of fencing district which alleged that the assessment was levied by board of commissioners and approved by

the county court was not defective in failing to allege that the county court made the assessment, since it would be presumed that assessment was regularly made. *Eagle v. Board of Comm'rs*, 91 Ark. 378, 121 S.W. 340 (1909).

Foreclosure.

Foreclosing authorities must exercise good faith by endeavoring to ascertain names of owners of property. *Meserve v. Edmonds*, 223 Ark. 297, 265 S.W.2d 704 (1954).

Property owners are entitled to personal service in foreclosure proceedings. *Meserve v. Edmonds*, 223 Ark. 297, 265 S.W.2d 704 (1954).

Property owners should be made par-

ties to foreclosure proceedings, and if not known, that fact should be alleged so that suit can proceed in rem as against unknown property owners. *Meserve v. Edmonds*, 223 Ark. 297, 265 S.W.2d 704 (1954).

Reimbursement.

Where the commissioners of a fencing district advanced their own funds for material to build the fence, although the fence was never completed for want of sufficient funds, the district was liable to reimburse them for the money paid out in constructing the fence. *Eagle v. Board of Comm'rs*, 91 Ark. 378, 121 S.W. 340 (1909).

14-386-120. Certifying delinquencies in no-fence district.

(a) In all instances where county collectors are charged with the collection of assessments in no-fence districts, they shall, in addition to certifying the list of delinquent assessments to the commissioners of the district, certify the list to the county clerk.

(b)(1) It is the duty of the clerks to add delinquent assessments to any application for redemption of lands sold for state and county taxes.

(2) It is the duty of the county treasurers to collect the assessments and pay the collection to the commissioners of the district.

History. Acts 1933, No. 147, §§ 1, 2; Pope's Dig., §§ 13893, 13894; A.S.A. 1947, §§ 78-1362, 78-1363.

14-386-121. Annual repairs.

(a) The cost of keeping a fence in repair shall, from year to year, be ascertained, collected, and expended in the same manner as is provided in § 14-386-115 as to the cost of the original erection of the fence. However, the county court shall be authorized, on the petition of two-thirds ($\frac{2}{3}$) of the landowners of the district, to revoke the order that established the district.

(b) No order of revocation shall in any way interfere with or prevent the assessment and collection of all sums needed to pay all debts contracted by the fencing board prior to the order of revocation.

History. Acts 1891, No. 158, § 11, p. 272; C. & M. Dig., § 4671; Pope's Dig., § 5759; A.S.A. 1947, § 78-1313.

14-386-122. Control of fence construction.

(a) Fencing boards shall have control of the construction of the fence for their districts.

(b)(1) The boards may advertise for proposals for doing any work by contract and may accept or reject any proposals.

(2)(A) All contractors shall be required to give bond for the faithful performance of such contracts as may be awarded them, with good and sufficient securities in double the amount of the contract work.

(B) The bond shall be given to the board, and suits may be brought on it in the name of the board, but the sum recovered shall be for the use of the district for which the bond was given.

History. Acts 1891, No. 158, § 25, p. 272; C. & M. Dig., § 4665; Pope's Dig., § 5753; A.S.A. 1947, § 78-1308.

SUBCHAPTER 2 — SMALL STOCK**SECTION.**

14-386-201. Penalty.

14-386-202. Establishment of fencing districts.

SECTION.

14-386-203. Lawful fence.

Effective Dates. Acts 1899, No. 103, § 3: effective on passage.

Acts 1901, No. 155, § 3: effective on passage.

Acts 1907, No. 291, § 2: effective on passage.

Acts 1919 (1st Ex. Sess.), No. 688, § 2: Apr. 5, 1919. Emergency declared.

14-386-201. Penalty.

(a) Whenever a fencing district is established under the provisions of this subchapter, it shall be unlawful for any person owning or having control of stock that have been restrained from running at large to knowingly permit such stock to run at large within the territory comprising the district.

(b) Any person violating the provisions of subsection (a) of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars (\$10.00) nor more than twenty-five (\$25.00) dollars.

History. Acts 1901, No. 155, §§ 1, 2, p. § 5745; A.S.A. 1947, §§ 78-1332, 294; C. & M. Dig., § 4657; Pope's Dig., 78-1333.

CASE NOTES

In General.

This section provides a penalty for violation of this subchapter. *Flowers v. State*, 83 Ark. 208, 103 S.W. 384 (1907).

Cited: *Cranor v. Jenkins*, 149 Ark. 154, 231 S.W. 883 (1921).

14-386-202. Establishment of fencing districts.

(a)(1) The county court of any county is authorized, empowered, and required, on the petition of a majority in land value, acreage, or number of landowners of any townships or any fractional part of them contiguous to each other, to form and establish a fencing district and establish the boundaries of it, in accordance with the petition.

(2) The court may change the boundaries of the district by adding new territory contiguous to it upon the application of a majority in land value, acreage, or number of landowners of the territory to be added.

(3) Each district shall be designated by number.

(b)(1) The petitioners shall specify in their petition what stock they wish to restrain from running at large, and the county court shall make an order restraining the stock mentioned in the petition from running at large within the district.

(2) The district shall apply to such stock as are mentioned in the petition.

History. Acts 1899, No. 103, § 1, p. 166; 1907, No. 291, § 1, p. 688; C. & M. Dig., § 4655; Acts 1919, No. 688, § 1; A.S.A. 1947, § 78-1330.

CASE NOTES

ANALYSIS

In general.

Purpose.

Appeals.

In General.

Although enactment of this section was in the form of an amendment to § 14-386-104, the new matter included made it an independent and distinct law on the subject of fencing districts and authorized the establishment of districts against small stock as described in § 14-386-203. *Flowers v. State*, 83 Ark. 208, 103 S.W. 384 (1907).

Purpose.

A fencing district may be established

by the county court for the purpose of keeping out small stock without complying with law governing fencing districts generally. *Flowers v. State*, 83 Ark. 208, 103 S.W. 384 (1907).

Appeals.

The question whether a fencing district was legally formed will not be considered on appeal if the appellant's abstract fails to set out the proceedings under which the district was formed. *Eagle v. Board of Comm'rs*, 91 Ark. 378, 121 S.W. 340 (1909).

Cited: *Hill v. Gibson*, 107 Ark. 130, 154 S.W. 203 (1913).

14-386-203. Lawful fence.

Whenever a fencing district is established as to small stock, such as hogs, sheep, goats, etc., four (4) barbed wires securely fastened to posts firmly set in the ground, not exceeding sixteen feet (16') apart, the bottom wire twenty inches (20") above the ground, the second wire ten inches (10") above the first, the third wire twelve inches (12") above the second, and the fourth wire twelve inches (12") above the third; or five (5) sound rails securely fastened to posts firmly set in the ground, the top rail four and one-half feet ($4\frac{1}{2}'$) above the ground, and the others properly spaced beneath, shall be a lawful fence within the district.

History. Acts 1899, No. 103, § 2, p. 166; C. & M. Dig., § 4656; Pope's Dig., § 5744; A.S.A. 1947, § 78-1331.

SUBCHAPTER 3 — ADDITIONS OR CONSOLIDATIONS**SECTION.**

14-386-301. Addition of adjacent area to fencing district.

SECTION.

14-386-302. Consolidation of fence or no-fence districts.

Effective Dates. Acts 1927, No. 83, § 4: Mar. 4, 1927. Emergency declared. Acts 1933, No. 119, § 3: effective on passage.

14-386-301. Addition of adjacent area to fencing district.

(a) When any number of owners of either rural acreage or city or town land near or adjacent to any fencing district organized under and pursuant to the law shall present to the county court a petition, in writing, accompanied by a map giving description and setting forth such land as they desire to have enclosed in any such district embraced within the enclosure of the fence of the district, it shall be the duty of the court to give a notice by publication in some newspaper in the county for a period of not less than twenty (20) days of a hearing upon the petition, calling upon all persons whose lands or interest may be affected by the petition to appear and show cause, if any, why the request of the petitioner should not be granted.

(b) If upon the hearing, the court shall deem that owners of a majority in value or acreage of the land affected favor the petition and that the lands should be enclosed within the fencing district and protected by the enclosure or fences kept and maintained by the district, it shall be the duty of the court to make an order enclosing the lands in the district and to direct the commissioner of the district to make such alteration of the fences kept and maintained by the district as may be necessary to bring the lands within the enclosure.

(c)(1) From the date of the order, all lands which shall become a part of the fencing district shall thereafter be liable for such charges, taxes, and assessments as are levied against other lands within the district.

(2)(A) The lands so enclosed in the order shall be liable for any special assessments made by the commissioner of the district, to help defray the cost and expenses of making the alteration necessary to enclose the additional lands.

(B) The assessment shall be paid by the owners of the lands.

History. Acts 1927, No. 83, §§ 1-3, p. 1943, No. 41, § 1; A.S.A. 1947, 225; Pope's Dig., §§ 5786-5788; Acts §§ 78-1334 — 78-1336.

CASE NOTES

ANALYSIS

Constitutionality.

Assessments.

Funds.

Order of court.

Petitions.

Constitutionality.

This section does not violate the provision of Ark. Const., art. 5, § 29. *Norton v. No Fence Dist.* No. 2, 181 Ark. 560, 26 S.W.2d 878 (1930).

Assessments.

Assessments in the new territory should be made in the method prescribed by the statute authorizing the original district. *Norton v. No. Fence Dist.* No. 2, 181 Ark. 560, 26 S.W.2d 878 (1930).

Funds.

After new territory is annexed to fencing district, it becomes a part of the district and all the funds on hand at that time can be expended for any lawful purpose of the whole district. *Barber v. Edwards*, 200 Ark. 940, 141 S.W.2d 831 (1940).

Order of Court.

Order of county court annexing 15 square miles of territory to fencing district created by special act was valid against collateral attack. *Barber v. Edwards*, 200 Ark. 940, 141 S.W.2d 831 (1940).

Court's refusal to make order of annexation where petition contained a majority in acreage or value of the lands embraced for annexation was an abuse of discretion. *Armstrong v. Bull*, 201 Ark. 377, 144 S.W.2d 707 (1940).

Petitions.

Where two petitions were filed for annexation of territory to a certain district and the lands described in each petition were adjoining and adjoined to original district, it was not error to consolidate the petitions and have one hearing on both petitions. *Norton v. No Fence Dist.* No. 2, 181 Ark. 560, 26 S.W.2d 878 (1930).

Second petition could be filed at any time subsequent to judgment dismissing first petition on ground that petitioners did not constitute a majority in value or acreage of the lands sought to be annexed, and parties to first petition could join other and additional parties in the second petition could join other and additional parties in the second petition. *Armstrong v. Bull*, 201 Ark. 377, 144 S.W.2d 707 (1940).

Dismissal of first petition to have land annexed to and included in a fencing district because petitioners did not constitute a majority in value or acreage of the lands sought to be annexed was not res judicata of subsequent petition embracing different and additional lands and landowners. *Armstrong v. Bull*, 201 Ark. 377, 144 S.W.2d 707 (1940).

14-386-302. Consolidation of fence or no-fence districts.

(a)(1) All fence districts or no-fence districts created by special act or under § 14-386-202 in any county in the State of Arkansas may be consolidated under the management of one (1) board of commissioners by order of the county court.

(2) One (1) or either of the boards of the districts may be appointed as commissioners of the consolidated district, or the court may appoint three (3) other landowners of the district as commissioners.

(b) The consolidated district as provided in this section shall be governed by general statutes pertaining to fencing districts and all the power conferred in them is invested in the consolidated district and in its board of commissioners.

History. Acts 1933, No. 119, §§ 1, 2;
A.S.A. 1947, §§ 78-1345, 78-1346.

SUBCHAPTER 4 — ENCLOSURE BY OTHER DISTRICTS**SECTION.**

- 14-386-401. Penalty for animals running
at large — Damages.
14-386-402. Petition to establish district.
14-386-403. Submission to electors.
14-386-404. Manner of election.

SECTION.

- 14-386-405. Election results.
14-386-406. Rejection of proposal.
14-386-407. Payment of expenses.
14-386-408. Navigable river as lawful
fence.

Effective Dates. Acts 1943, No. 16, § 10: approved Feb. 1, 1943. Emergency clause provided: "Whereas, due to the state of war now existing between the United States of America and various foreign countries, it is necessary that this state grow vast additional amounts of agricultural products; and it is impossible to obtain the proper materials for the construction of fences, an emergency has arisen, and does now exist and is hereby declared. Therefore, for said reasons, it is hereby declared necessary for the preservation of the public peace, health and safety that this act shall become effective without delay. An emergency therefore exists, and this act shall take effect and be in force from and after its passage."

Acts 1943, No. 106, § 2: approved Feb. 24, 1943. Emergency clause provided: "Whereas, due to the state of war now existing between the United States of America and various foreign countries, it is necessary that this state grow vast additional amounts of agricultural products; and it is impossible to obtain the proper materials for the construction of fences, an emergency has arisen, and does now exist and is hereby declared. Therefore, for said reasons, it is hereby declared necessary for the preservation of the public peace, health and safety that this act shall become effective without delay. An emergency therefore exists, and this act shall take effect and be in force from and after its passage."

14-386-401. Penalty for animals running at large — Damages.

(a) If a majority of the qualified electors voting in an election held under the provisions of this subchapter shall approve the creation of the proposed fencing district, the district shall be held and deemed to be enclosed by a good and lawful fence, and it shall be unlawful for any person who is the owner, or who has control, of any kind of stock to let them run at large in the district.

(b)(1) Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one dollar (\$1.00) or more than fifty dollars (\$50.00).

(2) In addition to the fine, an offender shall be liable for double the amount of any damages that any person may sustain by reason of his stock running at large in the district, to be recovered by action before any court of competent jurisdiction.

(c) This section shall not prohibit any person from fencing his lands, or any part of them separately, and pasturing them.

History. Acts 1943, No. 16, § 4; 1943, No. 106, § 1; A.S.A. 1947, § 78-1340.

14-386-402. Petition to establish district.

When any number of landowners owning land adjacent to any fencing district organized under and pursuant to the law shall present to the county court a petition, in writing, accompanied by a map, giving a description and setting forth what land they desire to have enclosed in such district, and where the lands as set forth and described in the petition are bounded or completely enclosed by existing fencing districts, no-fence districts, counties where a stock law is in effect, or navigable rivers, or combination of them, it shall be the duty of the court to give notice, by publication in some newspaper published in the county where the lands lie, of the filing of the petition and a description of all lands as set forth and contained in the description.

History. Acts 1943, No. 16, § 1; A.S.A. 1947, § 78-1337.

14-386-403. Submission to electors.

(a) The county court shall in the same publication prescribed by § 14-386-402 give notice of and cause an election to be held within thirty (30) days of the date of the filing of the petition, in the townships or parts of townships included in the petition, where the question of the creation of the proposed fencing district shall be submitted to the qualified electors living or owning land in the proposed district.

(b) The court shall designate a place in each township or parts of each township to be affected by the proposed district where the election

shall be held and appoint and name the judges and clerks to conduct the election.

History. Acts 1943, No. 16, § 2; A.S.A. 1947, § 78-1338.

14-386-404. Manner of election.

(a) Except as provided for in this subchapter, all elections held under the provisions of this subchapter shall be held subject to and in accordance with the general election laws of this state.

(b) Ballots used in elections provided for in this subchapter shall be substantially in the following form:

"FENCING DISTRICT BALLOT

"A petition has been filed in the County court of County to create and establish a fencing district within that part of county bounded and completely enclosed by (here insert the limits and boundaries as contained in the petition). If a majority of the qualified electors voting in this election approve of the proposed fencing district as described above, thirty (30) days after the date of this election, it shall be unlawful for any person or persons to permit stock to roam or run at large within such district.

FOR the creation of the fencing district ☐.
AGAINST the creation of the fencing district ☐.

History. Acts 1943, No. 16, § 3; A.S.A. 1947, § 78-1339.

14-386-405. Election results.

(a) After the county election commissioners have ascertained and declared the results of any election held under the provisions of this subchapter, it shall be the duty of the county court to cause the results to be printed in some newspaper published in the county where the lands lie.

(b) If the proposed district has been approved, the county court shall declare the proposed fencing district to be created.

History. Acts 1943, No. 16, § 6; A.S.A. 1947, § 78-1342.

14-386-406. Rejection of proposal.

If, at any election held under the provisions of this subchapter, a majority of the electors reject the proposed fencing district, no petition proposing to create or establish such a district with the same boundaries shall be filed within one (1) year from the date of the election at which the proposed district was rejected.

History. Acts 1943, No. 16, § 7; A.S.A. 1947, § 78-1343.

14-386-407. Payment of expenses.

All expenses incurred by any official or officer of any county in performance of duties defined by this subchapter and the costs of all elections held under the provisions of this subchapter shall be paid by the persons signing or filing the petition as provided in this subchapter, unless there is, in the opinion of the county judge, sufficient funds in the county general revenues, in which event the judge is empowered to pay all costs from these revenues, at his discretion.

History. Acts 1943, No. 16, § 5; A.S.A. 1947, § 78-1341.

14-386-408. Navigable river as lawful fence.

Where the boundary of any fencing district created under the provisions of this subchapter shall be a navigable river, the river shall be deemed and held to be a good and lawful fence, as part of the fence enclosing the remainder of the district.

History. Acts 1943, No. 16, § 8; A.S.A. 1947, § 78-1344.

SUBCHAPTER 5 — STATUS AND FUNDING

SECTION.

- 14-386-501. Construction.
- 14-386-502. Validation of existing districts.
- 14-386-503. Money from federal government or private sector.

SECTION.

- 14-386-504. Issuance of bonds, notes, etc.
- 14-386-505. Disposition of surplus funds.

Effective Dates. Acts 1935, No. 10, § 5: approved Feb. 4, 1935. Emergency clause provided: "It is hereby found and declared that as a result of the economic depression and adverse weather conditions, unemployment is rife throughout the State of Arkansas, and agriculture and industry in the area effected [affected] by this act are in great distress and are suffering from the lack of the public improvements contemplated by this act which cannot be properly fi-

nanced without the assistance of this legislation; and that many sections of the State are in immediate need of the relief which is sought to be effected by the passage of this act. It is, therefore, found and declared that the immediate operation of this act is necessary for the preservation of the public peace, health and safety, and an emergency is accordingly hereby declared; and this act shall take effect and be in force from and after its passage."

14-386-501. Construction.

This subchapter shall be liberally construed to the end that its purposes may be successfully accomplished.

History. Acts 1935, No. 10, § 4; A.S.A. 1947, § 78-1361.

14-386-502. Validation of existing districts.

The organization of all fencing districts created and established by order of any county court in the State of Arkansas, which have not been abandoned or dissolved by the judgment or order of any court of competent jurisdiction, are ratified and confirmed. All districts are declared to be legal entities in the nature of quasi-municipal corporations, public agencies with all powers and authorities vested in them by the provisions of §§ 14-386-101 — 14-386-108, 14-386-111, 14-386-113, 14-386-115 — 14-386-119, 14-386-121, 14-386-122, and all legislation supplementary thereto.

History. Acts 1935, No. 10, § 1; Pope's Dig., § 5789; A.S.A. 1947, § 78-1358.

elections in districts established by special acts, Acts 1927, No. 84, § 1.

Publisher's Notes. As to validation of

CASE NOTES**Elections.**

An election held under a local law on a different date from that specified in the law was not validated by Acts 1927, No. 84, since the legislature, being prohibited from passing local acts by constitutional amendment, could not make effective a void local act theretofore passed. Simpson

v. Teftler, 176 Ark. 1093, 5 S.W.2d 350 (1928) (decision under prior law).

An order of the county court calling a stock-law election, not being signed by the qualified number of electors, was not validated by Acts 1927, No. 84. State v. Phillips, 176 Ark. 1141, 5 S.W.2d 362 (1928) (decision under prior law).

14-386-503. Money from federal government or private sector.

(a) All fencing districts are expressly authorized to accept grants of money from, and to borrow money from, the federal government, or from any federal agency, or from any private person, individual, or corporation, or from any other source, for the purpose of executing or carrying out the purposes for which the district was organized.

(b)(1) Any district, or the fencing board of the district, for the purposes prescribed in subsection (a) of this section is expressly authorized and empowered to enter into and to execute the loan agreements and contracts with the lending agencies as the board may deem necessary or proper in connection with any grant or loan to the district.

(2) Any agreement or contract entered into by any district, or the board of any such district, is ratified, confirmed, and made binding, in all respects, upon any board and its successor, from time to time, and

any contract shall be enforceable by an appropriate civil action in the courts of this state.

History. Acts 1935, No. 10, § 2; Pope's Dig., § 5790; A.S.A. 1947, § 17-1359.

14-386-504. Issuance of bonds, notes, etc.

(a)(1) Any fencing district, or the fencing board of the district, for the purposes prescribed in § 14-386-503 is expressly authorized and empowered to issue its general obligation, negotiable bonds, notes, or certificates of indebtedness, in the corporate name of the district, or in the name of the board of any district, in form, denomination, rate of interest, amount, place of payment, date of retirement, terms of payment, or redemption, and with contract provisions required by the lending agency or approved by the board of any district.

(2) In no event shall any bonds or other evidences of indebtedness be sold by any such district, or the board of any such district, on any basis that will cost the borrower over the life of the obligation interest at more than six percent (6%) per annum.

(b)(1) Any and all bonds, notes, or certificates of indebtedness issued by any district, or the board of any such district in its corporate capacity, shall be signed by the chairman and attested by the secretary of the board, in the name of, and for, the district.

(2)(A) All bonds, notes, certificates of indebtedness, or other evidences of indebtedness issued under this subchapter shall:

- (i) Be, and constitute, the general obligation of any district;
- (ii) Have the effect of negotiable paper;
- (iii) Not be invalid for any irregularity or defect in the proceedings for the issue or sale of them; and
- (iv) Be incontestable in the hands of bona fide purchasers or holders for value.

(B)(i) Under no circumstances shall any such bond, note, or other evidence of indebtedness issued under this subchapter be held or construed to be an obligation of the State of Arkansas, nor shall the State of Arkansas, under any theory or upon any grounds, be liable or responsible for them.

(ii) The bonds, notes, or other evidences of indebtedness, shall be solely and exclusively the general negotiable obligations of the district issuing them in its corporate capacity, or of the board for the district in its representative capacity, and without personal obligation or liability of either of the individual members of the board, and shall be secured by, and payable only from, the assets, property, securities, and revenues, matured or unmatured, of the district, authority for the mortgage, or pledge of which as security for the payment of them is expressly given.

History. Acts 1935, No. 10, § 3; Pope's Dig., § 5791; A.S.A. 1947, § 78-1360.

14-386-505. Disposition of surplus funds.

When any fencing district in this state has completed all of the contemplated improvements and has paid and discharged all of its obligations and has a surplus of funds on hand, not needed for repair or maintenance or the operation of the district, then, in such event, the board of directors of the district may, in their discretion, contribute so much of the surplus funds as they may determine to any public, charitable, educational, or general welfare purpose within the county in which the district is situated.

History. Acts 1949, No. 275, § 1; A.S.A. 1947, § 78-1364.

SUBCHAPTER 6 — STOCK AT LARGE

SECTION.

14-386-601. Impounding of animals.

14-386-602. Return to owner.

14-386-603. Appointment of appraisers.

SECTION.

14-386-604. Sale of impounded animals.

14-386-605. Disposition of excess money.

14-386-606. Duties of treasurer.

Publisher's Notes. Acts 1897 (Ex. Sess.), No. 28, § 6, contained a proviso which read: "The provisions of this bill shall not apply to Independence County."

14-386-601. Impounding of animals.

(a) Any person finding stock running at large in any fencing district may impound them.

(b) Immediately upon impounding the stock the impounder shall give notice to the owner or his agent, if known.

History. Acts 1897 (Ex. Sess.), No. 28, § 1, p. 78; C. & M. Dig., § 4686; Pope's Dig., § 5775; A.S.A. 1947, § 78-1347.

CASE NOTES

ANALYSIS

Fences.

Running at large.

Fences.

Stock running at large may be impounded even though fence has never been constructed by district, where district is entirely enclosed by fences of other

districts. *Cranor v. Jenkins*, 149 Ark. 154, 231 S.W. 883 (1921).

Running at Large.

Animals being closely pursued by their owners, in an effort to catch them, cannot be regarded as running at large within the meaning of this section. *Flowers v. Huff*, 133 Ark. 138, 202 S.W. 31 (1918).

14-386-602. Return to owner.

If the owner shall, within two (2) days after being notified, pay the reasonable charges for impounding, feeding, and caring for the stock, and also pay all damages to owners of crops caused by the stock, they shall be turned over to him.

History. Acts 1897 (Ex. Sess.), No. 28, § 2, p. 78; C. & M. Dig., § 4687; Pope's Dig., § 5776; A.S.A. 1947, § 78-1348.

14-386-603. Appointment of appraisers.

If the parties interested fail to agree upon the amount of the charges and damages, the secretary of the fencing board and the impounder shall each appoint an appraiser, and the appraisers shall adjust and fix the charges and damages, calling in a third party if they cannot agree.

History. Acts 1897 (Ex. Sess.), No. 28, § 3, p. 78; C. & M. Dig., § 4688; Pope's Dig., § 5777; A.S.A. 1947, § 78-1349.

14-386-604. Sale of impounded animals.

If the owner or agent fails to pay the charges and damages within two (2) days after notice, the impounder shall post written or printed notices in three (3) public places in the fencing district, describing the property and fixing a day for its sale at some public place in the district upon a day at least ten (10) days from the date of the notices, and shall sell the property at the time and place mentioned in the notices, at public outcry, to the highest bidder for cash in hand and within legal hours for judicial sales.

History. Acts 1897 (Ex. Sess.), No. 28, § 4, p. 78; C. & M. Dig., § 4689; Pope's Dig., § 5778; A.S.A. 1947, § 78-1350.

14-386-605. Disposition of excess money.

(a) After deducting the charges and damages as ascertained in § 14-386-603, the impounder shall pay the remainder to the treasurer of the fencing district, taking his receipt for it.

(b) The failure to pay the moneys to the treasurer by the impounder or other person claiming to be damaged by the stock shall be deemed theft and punished as such.

History. Acts 1897 (Ex. Sess.), No. 28, § 5, p. 78; C. & M. Dig., § 4690; Pope's Dig., § 5779; A.S.A. 1947, § 78-1351.

14-386-606. Duties of treasurer.

The treasurer of the fencing district shall keep, in the books of the district, an accurate account of all moneys so received by him, with the name of the depositor and the date of the receipt by him, being responsible upon his official bond for them, and shall pay over the moneys to the proper owner of the stock so sold, upon proof of his ownership.

History. Acts 1897 (Ex. Sess.), No. 28, § 6, p. 78; C. & M. Dig., § 4691; Pope's Dig., § 5780; A.S.A. 1947, § 78-1352.

CHAPTER 387

STOCK LAW DISTRICTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. CREATION OF DISTRICT — PETITION METHOD.
3. CREATION OF DISTRICT — ELECTION METHOD.
4. ADDITION OF TOWNSHIPS TO DISTRICT.
5. EXEMPTION OF TOWNSHIPS IN DISTRICT INCLUDING ENTIRE COUNTY.
6. STOCK MARSHALS.
7. MISCELLANEOUS PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 14-387-101. Payment of expenses.
14-387-102. Lawful fence.
14-387-103. Impounding stock running
 at large.
14-387-104. Fees for impounding.

SECTION.

- 14-387-105. Assessment of damages.
14-387-106. Sale of impounded stock generally.
14-387-107. Sale of stock when owner unknown.

Effective Dates. Acts 1883, No. 57, § 17: effective on passage.

14-387-101. Payment of expenses.

(a) In no case shall the county be liable for any costs by reason of any county or subdivision availing or attempting to avail itself of this subchapter and subchapter 2 of this chapter.

(b) In all cases the whole expense shall be paid by the petitioners.

History. Acts 1883, No. 57, § 15, p. 81; C. & M. Dig., § 319; Pope's Dig., § 333; A.S.A. 1947, § 78-1427.

14-387-102. Lawful fence.

Whenever this subchapter and subchapter 2 of this chapter become operative in any county or subdivision, any fence within the county or subdivision shall be deemed a lawful fence that is made of post and wire or plank, where the top wire or plank shall be five feet (5') from the ground and the wire or plank sufficiently close to keep in the class of stock embraced within this subchapter or the order of the court made in pursuance of it.

History. Acts 1883, No. 57, § 14, p. 81;
C. & M. Dig., § 318; Pope's Dig., § 332;
A.S.A. 1947, § 78-1426.

14-387-103. Impounding stock running at large.

(a) If any stock forbidden to run at large under the provisions of this subchapter and subchapter 2 of this chapter shall enter the cultivated lands of another, without his consent, in any county or subdivision in which the provisions of this subchapter and subchapter 2 of this chapter have become operative, the owner, lessee, or person in lawful possession of the lands may impound the stock and detain them until his fees and all damages occasioned by the stock are paid.

(b) Whenever any stock is impounded under the provisions of this section, notice shall be given to the owner, if known, and the owner shall be entitled to their possession upon payment of fees and damages.

History. Acts 1883, No. 57, §§ 9, 10, p. §§ 327, 328; A.S.A. 1947, §§ 78-1421, 81; C. & M. Dig., §§ 313, 314; Pope's Dig., 78-1422.

CASE NOTES**Construction.**

Busby v. Reid, 138 Ark. 63, 210 S.W. 625 (1919).

This section must be strictly construed.

14-387-104. Fees for impounding.

Any person impounding stock under the provisions of this subchapter and subchapter 2 of this chapter shall be entitled to the following fees:

- (1) Ten cents (10¢) per day per head for hogs;
- (2) Ten cents (10¢) per day per head for goats; and
- (3) Five cents (5¢) per day per head for sheep.

History. Acts 1883, No. 57, § 11, p. 81;
C. & M. Dig., § 315; Pope's Dig., § 329;
A.S.A. 1947, § 78-1423.

14-387-105. Assessment of damages.

(a) The damages done by impounded stock may be assessed by any three (3) disinterested householders of the county or subdivision, who shall first take an oath before some officer of the county authorized to administer oaths to view and assess the damages fairly and honestly.

(b) The assessment by the householders shall be final.

History. Acts 1883, No. 57, § 11, p. 81;
C. & M. Dig., § 315; Pope's Dig., § 329;
A.S.A. 1947, § 78-1423.

14-387-106. Sale of impounded stock generally.

(a) If the owner of impounded stock or his agent, after being notified of the impoundment, shall neglect to pay the fees and damages, the taker-up of the stock may sell them at public auction for cash, after first giving five (5) days' notice of the time, place, and terms of the sale, by:

- (1) One (1) posted handbill on the courthouse door of the county; and
- (2) A copy of the notice delivered to the owner of the stock, if known.

(b) The taker-up shall:

- (1) Apply the proceeds, after deducting expenses of sale, to the satisfaction of his fees and damages; and
- (2) Pay the balance to the owner of the stock.

History. Acts 1883, No. 57, § 12, p. 81;
C. & M. Dig., § 316; Pope's Dig., § 330;
A.S.A. 1947, § 78-1424.

14-387-107. Sale of stock when owner unknown.

(a) If no owner of impounded stock can be found, the taker-up may, after the expiration of five (5) days, make an affidavit before a justice of the peace describing the stock and that the owner is unknown to the affiant, which affidavit shall be delivered immediately by the justice to the clerk of the county court, to be kept in his office for inspection.

(b)(1) After the filing of the affidavit, the taker-up may sell the stock as in cases where the owner is known, except that a copy of the notice posted is not to be delivered.

(2) If any sum remains after satisfying his fees and damages, the taker-up shall report it, under oath, to the clerk and pay the money over to the county treasurer to be paid, received, and disbursed as in the case of strays.

History. Acts 1883, No. 57, § 13, p. 81;
C. & M. Dig., § 317; Pope's Dig., § 331;
A.S.A. 1947, § 78-1425.

SUBCHAPTER 2 — CREATION OF DISTRICT — PETITION METHOD**SECTION.**

14-387-201. Duty to order no running at large.

14-387-202. Filing of petition.

14-387-203. Deposit for costs, etc.

SECTION.

14-387-204. Notice of filing petition.

14-387-205. Order prohibiting stock running at large.

14-387-206. Setting aside of order.

Effective Dates. Acts 1883, No. 57,
§ 17: effective on passage.

14-387-201. Duty to order no running at large.

Upon the written petition of a majority of the qualified electors of any county bordering upon a navigable stream and having territory in cultivation subject to overflow, or any subdivision of a county consisting of not less than thirty-six (36) square miles, where the subdivision borders upon a navigable stream and contains territory in cultivation subject to overflow, being filed in the county court of the county, requesting an order to prevent the running at large of hogs, sheep, and goats within the county or subdivision, as the case may be, it shall be the duty of the court to make such an order when the petitioners have complied with this subchapter and subchapter 1 of this chapter.

History. Acts 1883, No. 57, § 1, p. 81;
C. & M. Dig., § 305; Pope's Dig., § 319;
A.S.A. 1947, § 78-1413.

CASE NOTES

Cited: Holt v. Howard, 206 Ark. 337,
175 S.W.2d 384 (1943).

14-387-202. Filing of petition.

(a) When the qualified electors of any county, or subdivision of a county consisting of not less than thirty-six (36) square miles, desire to avail themselves of the benefits of this subchapter and subchapter 1 of this chapter, they shall file their petition, signed by a majority of the qualified electors of the county or subdivision, in the county court of the county at a regular term of the court.

(b)(1) The petition shall set forth, clearly, whether it is their intention to prevent the running at large of all animals mentioned in § 14-387-201 or only one (1) or more classes of them.

(2) If the petition is from the qualified electors of a subdivision, the subdivision shall be particularly described and its boundaries clearly designated.

History. Acts 1883, No. 57, §§ 2, 3, p. §§ 320, 321; A.S.A. 1947, §§ 78-1414, 81; C. & M. Dig., §§ 306, 307; Pope's Dig., 78-1415.

14-387-203. Deposit for costs, etc.

(a) The county court, after the filing of a petition pursuant to § 14-387-202 shall proceed no further with the matter until the petitioners, or some of them, deposit with the clerk of the court a sufficient amount of money to pay all the costs, fees, and expenses that may arise in making the order.

(b) Under the provisions of this subchapter, the amount so deposited shall be determined by the court, and the clerk's receipt for it shall be filed with the petition.

History. Acts 1883, No. 57, § 4, p. 81; C. & M. Dig., § 308; Pope's Dig., § 322; A.S.A. 1947, § 78-1416.

14-387-204. Notice of filing petition.

(a)(1) After the filing of the petition as provided in § 14-387-202, the county court shall make an order directing the clerk to cause notice to be given immediately of the filing of the petition.

(2) The notice shall specify:

(A) The class of animals it is proposed shall not run at large; and

(B) If, for a subdivision of a county, the territory described in the petition.

(b)(1) The notice shall be published in some newspaper published in the county, if there is one.

(2)(A) If no newspaper is published in the county, the notice shall be posted at the courthouse door and at each voting precinct in the county, if the petition is for a county.

(B) If the petition is for a subdivision, then the notice shall be posted at three (3) of the most public places in the subdivision.

History. Acts 1883, No. 57, §§ 5, 6, p. 81; C. & M. Dig., §§ 309, 310; Pope's Dig., §§ 323, 324; A.S.A. 1947, §§ 78-1417, 78-1418. **Cross References.** Publication of notices, § 16-3-101 et seq.

14-387-205. Order prohibiting stock running at large.

(a)(1) At the next regular term of the county court after the filing of a petition under this subchapter, the court shall investigate the matter.

(2) If, on investigation, it appears that a majority of the qualified electors of the county or subdivision, as the case may be, signed the petition and that the notice provided for in § 14-387-204 was given, the court shall make an order prohibiting the running at large of such stock as may be described in the petition in the territory described or in the county, as the case may be, after January 1 after the order is made.

(b)(1)(A) Immediately after the making of the order, the clerk shall cause copies of it to be posted at every voting precinct in the county, if the order is made for the county.

(B) If the order is for a subdivision, then a copy of the order shall be posted in three (3) of the most public places in the subdivision.

(2) After January 1, it shall be unlawful to permit to run at large, within the limits designated, any animal of the class mentioned in the order.

History. Acts 1883, No. 57, §§ 7, 8, p. §§ 325, 326; A.S.A. 1947, §§ 78-1419, 81; C. & M. Dig., §§ 311, 312; Pope's Dig., 78-1420.

14-387-206. Setting aside of order.

(a)(1) Whenever any county or subdivision has availed itself of this subchapter and subchapter 1 of this chapter, it shall be lawful for a majority of the qualified electors of the county or district, as the case may be, to petition the county court to set aside the order prohibiting the stock mentioned from running at large.

(2) The same notice shall be given and proceedings had as provided in this subchapter for obtaining the order.

(b) The court shall set aside the former order if, on investigation, it finds that:

(1) A majority of the qualified electors have petitioned for it; and

(2) The proper notice has been given.

(c) The petitioners shall pay all costs for having the order set aside.

History. Acts 1883, No. 57, § 16, p. 81; C. & M. Dig., § 320; Pope's Dig., § 334; A.S.A. 1947, § 78-1428.

SUBCHAPTER 3 — CREATION OF DISTRICT — ELECTION METHOD

SECTION.

14-387-301. Order for election.

14-387-302. Form of ballot.

14-387-303. Result of election.

14-387-304. Effect of approval.

SECTION.

14-387-305. Taking up of strays.

14-387-306. Exemption of townships from district.

Publisher's Notes. Acts 1915, No. 156, §§ 1-4, as amended, were repealed by Acts 1947, No. 368, § 6. The first four sections of the 1947 act (§§ 14-387-301 — 14-387-303, 14-387-305) are similar to the repealed sections. However, Vangilder v. Faulk, 244 Ark. 688, 426 S.W.2d 821 (1968), held that, although Acts 1947, No.

368, § 6, repealed Acts 1915, No. 156, §§ 1-4, the reenactment of substantial portions of the 1915 act by the 1947 act neutralized the repeal and the 1947 act (§§ 14-387-101 — 14-387-306) should be considered as amendatory of the 1915 act (§§ 14-387-701 — 14-387-706).

CASE NOTES

ANALYSIS

In general.
Local initiated acts.

In General.

Acts 1915, No. 156, was not invalid as an attempted delegation of legislative authority. *Harrington v. White*, 131 Ark. 291, 199 S.W. 92 (1917) (decision under prior law).

Since Acts 1915, No. 156, was local exempting 23 counties, all amendatory acts subsequent to 1926 were void. *Johnson v. Simpson*, 185 Ark. 1074, 51 S.W.2d 233 (1932) (decision under prior law).

Since § 14-387-703 is the only provision of the law authorizing the annexa-

tion of single townships to stock-law district, and since this subject matter is not covered by this subchapter, the legislature did not intend its repeal. *Goggin v. Ratchford*, 217 Ark. 180, 229 S.W.2d 130 (1950).

Local Initiated Acts.

Where the electors of a particular county had not exercised their option to put into effect the general stock law, an initiated act of the county prohibiting the running at large of livestock was not invalid as in conflict with a general law of the state. *Smith v. Plant*, 179 Ark. 1024, 19 S.W.2d 1022 (1929) (decision under prior law).

14-387-301. Order for election.

(a) Whenever twenty-five percent (25%) of the qualified electors of three (3) or more townships in any county in this state, as shown by the election returns for Governor at the last general election preceding the date of the petition, shall petition the county court for the privilege of voting on the question of restraining horses, mules, asses, cattle, goats, swine, and sheep, or any two (2) or more of these animals, or the male species of them, from running at large, the court shall make an order for an election in the townships, to be held at any general or special election for state or county officers.

(b) If petitioners shall file with their petition proper bond to be approved by the court conditioned to pay all the cost and expense of a special election, the court may call an election at any time upon the filing of the petition by giving notice of it as provided by law for general elections, if the petition shall contain twenty-five percent (25%) of the qualified electors residing within each township mentioned in the petition.

History. Acts 1947, No. 368, § 1;
A.S.A. 1947, § 78-1401.

CASE NOTES

ANALYSIS

Court order.
Notice.
Petition.

Court Order.

Stock-law orders of county court, based on petitions making each township the

unit instead of making three or more adjoining townships the unit, were void and subject to collateral attack. *Fesler v. Eubanks*, 143 Ark. 465, 220 S.W. 457 (1920) (decision under prior law).

The invalidity of a county court's order calling for a stock-law election in six townships, one of which was added by a

petition not signed by the requisite number of qualified electors, was not cured by a chancery court decree restraining the holding of the election in such township, the chancery court having jurisdiction to restrain the election but not to cancel or amend the county court's order. *State v. Phillips*, 176 Ark. 1141, 5 S.W.2d 362 (1928) (decision under prior law).

After the jurisdictional requirements of filing the proper petition are met, the ordering of the election by the county court is merely a ministerial act. *Goggin v. Ratchford*, 217 Ark. 180, 229 S.W.2d 130 (1950).

Where voters filed a legal petition praying for a stock-law election and the court failed to act on the petition and order the election, but the election was advertised, called, and had, the election was not void for want of court order. *Goggin v. Ratchford*, 217 Ark. 180, 229 S.W.2d 130 (1950).

Notice.

A stock-law election was not invalid for

failure to comply with a specific section of the election laws regarding notice where it was apparent that the great body of the electors had actual notice of the election. *Whitaker v. Mitchell*, 179 Ark. 993, 18 S.W.2d 1026 (1929) (decision under prior law).

Petition.

A petition containing the requisite number of signers for a stock-law election is a jurisdictional prerequisite to the exercise of the county court's jurisdiction to call the election which it cannot do on its own motion. *State v. Phillips*, 176 Ark. 1141, 5 S.W.2d 362 (1928) (decision under prior law).

Where the evidence showed that the petitions upon which the county court ordered an election had not been signed by 25 percent of the qualified electors in each township as required by this section, the election was invalid. *Reamey v. Watt*, 240 Ark. 893, 403 S.W.2d 102 (1966).

14-387-302. Form of ballot.

There shall be written or printed on each ballot voted at an election under this subchapter the following sentences:

- "FOR restraining (insert the names of the animals mentioned in petition) from running at large ☐.
- "AGAINST restraining (insert the names of the animals named in the petition) from running at large ☐.

History. Acts 1947, No. 368, § 2;
A.S.A. 1947, § 78-1402.

14-387-303. Result of election.

If a majority of the legal voters voting for and against the provisions of this subchapter at the election, whether general or special, shall vote to restrain the running at large of the animals named in the petition, the clerk of the county court shall:

- (1) Enter on the record the result of the election;
 - (2) File the papers and terms of it in his office; and
 - (3)(A) Immediately give notice of the result by publication in some newspaper published in the county and by causing notices to be posted in three (3) public places in each township affected by the election.
- (B) If the vote shall be against restraining, publication and notice will not be required.

History. Acts 1947, No. 368, § 3;
A.S.A. 1947, § 78-1403.

CASE NOTES

ANALYSIS

Majority vote.
Publication and notice.

Majority Vote.

Majority of electors voting in proposed district controlled the creation and organization of the district, and townships where majority voted against formation of stock-law districts were not to be exempted. *Sailer v. State*, 192 Ark. 514, 92 S.W.2d 382 (1936) (decision under prior law).

Publication and Notice.

The burden was on the person seeking to invalidate the election to prove that publication was not made. *Gregory v. Crutchfield*, 209 Ark. 774, 192 S.W.2d 534 (1946) (decision under prior law).

Under former statute, the clerk was not required to both publish in a newspaper and to post in public places; either or the other was sufficient. *Gregory v. Crutchfield*, 209 Ark. 774, 192 S.W.2d 534 (1946) (decision under prior law).

14-387-304. Effect of approval.

When the required percent of the qualified electors and the required number of townships shall have petitioned the county court for the privilege of voting on the question of restraining the animals named in the petition from running at large, when the court shall have called an election as provided by this subchapter, when the majority of the legal electors in the townships shall have voted for enforcing the law restraining such animals from running at large, and when the provisions of this subchapter shall have been adopted as prescribed in it, then it shall be unlawful for any of the animals to be found running at large outside of the enclosure of the owner or keeper of it.

History. Acts 1947, No. 368, § 5;
A.S.A. 1947, § 78-1412.

CASE NOTES

Cited: *Wright v. Baxter*, 216 Ark. 880, 227 S.W.2d 967 (1950).

14-387-305. Taking up of strays.

(a) Whenever the provisions of this subchapter shall have been adopted as provided in this subchapter, six (6) months thereafter it shall be unlawful for the owners of any of the animals named in the petition that has been submitted, voted upon, and adopted to permit them to run at large outside of the enclosure of the owner or keeper.

(b)(1)(A) If any of the animals shall be found running at large outside the enclosure of the owner or keeper, it shall be lawful for any person to restrain them immediately.

(B) The person shall, within three (3) days, notify the owner or keeper of the animals, in writing, if known, stating the amount of

compensation for feeding and keeping the animals and the damage, if any, claimed, whereupon the owner or keeper of the animals shall pay to the taker-up of the animals a reasonable compensation for taking up, feeding, and caring for them and the actual damages sustained of him by them.

(2) If the owner or keeper of the animals is not known, they shall be deemed to be strays and shall be dealt with as provided by law with respect to taking up such property under the stray laws of this state.

History. Acts 1947, No. 368, § 4;
A.S.A. 1947, § 78-1404.

Cross References. Stray laws,
§ 2-38-101 et seq.

CASE NOTES

ANALYSIS

Construction.

Animals at large.

Damages.

Judicial notice.

Owner's right of recovery.

Stray laws.

Construction.

The right to impound stock running at large depends entirely upon statute conferring that right, and it must be strictly construed. *Ermert v. Howe*, 205 Ark. 78, 167 S.W.2d 144 (1943) (decision under prior law).

Animals at Large.

Whether the stock got out of an enclosure without the knowledge or permission of the owner is a question for the jury. *Favre v. Medlock*, 212 Ark. 911, 208 S.W.2d 439 (1948).

Damages.

Where statute making unlawful the running at large of cattle was put into effect by voters of the township, owner was not relieved of payment for damages done by this trespassing cattle simply because they escaped from his enclosure through no fault or lack of diligence on his part. *Pool v. Clark*, 207 Ark. 635, 182 S.W.2d 217 (1944) (decision under prior law).

Chancery court's finding of landowner's loss because of trespass by another's cattle was sustained. *Crumbley v. Guthrie*, 207 Ark. 875, 183 S.W.2d 47 (1944) (decision under prior law).

Judicial Notice.

Court should take judicial notice that by vote of the people, the terms of a stock law have been adopted. *Crumbley v. Guthrie*, 207 Ark. 875, 183 S.W.2d 47 (1944) (decision under prior law).

Owner's Right of Recovery.

Owner of impounded animal was entitled to recover it from purchaser at a sale which failed to comply with statutory provisions, and he was not required to make a tender of costs, damages, and expenses since suit was against purchaser whose title depended upon the validity of the sale. *Ermert v. Howe*, 205 Ark. 78, 167 S.W.2d 144 (1943) (decision under prior law).

At a sale of an animal under laws authorizing summary seizure and sale of animals running at large, purchaser was charged with notice of all defects of title and such gross irregularities as amount to lack of authority to sell, and it was for the purchaser to establish the validity of his title and show that the owner's title was legally divested. *Ermert v. Howe*, 205 Ark. 78, 167 S.W.2d 144 (1943) (decision under prior law).

Stray Laws.

The reference in former statute that strays shall be dealt with "under the stray laws of this state" did not violate Ark. Const., art. 5, § 23, prohibiting the extension of laws by reference. *Harrington v. White*, 131 Ark. 291, 199 S.W. 92 (1917) (decision under prior law).

14-387-306. Exemption of townships from district.

(a) A majority of the legal electors residing within the territory of any one (1) township included in the adoption shall have the right to file their petition with the court within sixty (60) days after the election showing cause why the township should not be included with the other townships where the adoption has been made.

(b)(1) If the petitioners and qualified electors shall show good and valid reason why the territory of the townships should not be governed by the order and shall, before the filing of the petition, give fifteen (15) days' notice, by publication, of their intention of filing and presenting the petition, and shall set forth in the notice their reasons why the township and petitioners should be exempt from the order adopting the act, then the court shall hear the petition, together with any remonstrance to it.

(2) If the court should find that the township and the citizens of it should be exempt from the provisions of the adoption, and that no injury will be done to citizens residing within adjoining townships, then the court shall make an order exempting the township from the adoption.

History. Acts 1947, No. 368, § 5;
A.S.A. 1947, § 78-1412.

CASE NOTES**Applicability.**

Acts 1915, No. 156, § 11, as amended by Acts 1919, No. 258, § 2, was applicable only to a situation where the stock law was put into effect by procedure set forth in such acts, and did not apply to a stock

law which became effective through initiative petition. *Turnage v. Gibson*, 211 Ark. 268, 200 S.W.2d 92 (1947) (decision under prior law).

Cited: *Wright v. Baxter*, 216 Ark. 880, 227 S.W.2d 967 (1950).

SUBCHAPTER 4 — ADDITION OF TOWNSHIPS TO DISTRICT**SECTION.**

14-387-401. Authority and procedure generally.

Effective Dates. Acts 1929, No. 193, § 2: approved Mar. 27, 1929. Emergency clause provided: "In view of the fact that in many sections of the state the fences are destroyed, and the farmers are unable to replace them in time to protect the

crops to be grown in 1929, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety, this act shall take effect and be in force from and after its passage.

14-387-401. Authority and procedure generally.

(a) In all counties in this state where a majority of the area of the county has been created into a stock law district, or where any portion of a county has been created into a stock law district, by an act of the General Assembly prohibiting the running at large of certain designated livestock within a prescribed area and providing penalties for it and the act provides that other townships may become attached to and made a part of the stock law district by a majority petition of qualified electors of their respective townships to the county judge, who shall declare the townships attached to the original territory described in the act, it shall be lawful for any township, or part of a township in the county, whether it is contiguous or adjoining the original stock law district or not, to be made a part of the stock law district and subject to all provisions of the original act, as to the kind of stock running at large in it and the penalties for violations of the original act, upon a majority of the qualified electors residing in the territory to be affected, and named or described in the petition, filing with the county clerk a petition, describing the township, or parts of it, and requesting that the territory described in it be made a part of the original stock law district theretofore created by the General Assembly for parts of the county.

(b)(1) The county court of any such county, upon finding that the petition correctly described the territory or names the townships to be affected and contains a majority of the qualified electors residing in the territory to be affected, shall make an order naming the township and describing the part of any township included, if only a part of a township is to be included, naming the kind of livestock prohibited from running at large in it and declaring the territory described in the order to be a part of the original stock law district of the county and subject to all the provisions and penalties of the original act as fully as though described in the original act of the General Assembly.

(2)(A) The order shall be effective from and after the date of the order.

(B)(i) Notice of the order shall be given by publication of it in some newspaper published in the county.

(ii) The costs of the order and publication shall be paid by petitioners.

History. Acts 1929, No. 193, § 1;
Pope's Dig., § 339; A.S.A. 1947,
§ 78-1429.

CASE NOTES**Applicability.**

This section applies only to districts where a majority of the area of the county has been created into stock-law district or

to districts created by the legislature. Wright v. Badders, 181 Ark. 1124, 29 S.W.2d 671 (1930); Holt v. Howard, 206 Ark. 337, 175 S.W.2d 384 (1943).

SUBCHAPTER 5 — EXEMPTION OF TOWNSHIPS IN DISTRICT INCLUDING ENTIRE COUNTY

SECTION.

14-387-501. Authority and procedure generally.

SECTION.

14-387-502. Effect of exemption.

Preambles. Acts 1949, No. 204 contained a preamble which read: "Whereas, there is now in force in several counties in this State laws restraining the running at large of cattle, horses, mules, asses, hogs, sheep and goats within the entire county; and

"Whereas, there are many political townships within such counties where not more than ninety percent (90%) of the lands in such townships are improved or enclosed, and the residents of the such mountainous and hilly sections have been engaged in raising livestock in the open range and making a livelihood therefrom, and such enactment, in such township,

causes such inhabitants a great loss and hardship;

"Therefore...."

Effective Dates. Acts 1949, No. 204, § 3: Mar. 1, 1949. Emergency clause provided: "Whereas, many owners of horses, mules, asses, cattle, hogs, sheep and goats, where local stock laws are in force, are now without means to build fences and restrain their livestock now running in the open range, and are not so located where it is possible to buy milk for their children daily without great loss of time in miles of travel, an emergency is found to exist and is hereby declared, and this Act shall take effect after its passage and approval."

14-387-501. Authority and procedure generally.

(a) In any county in this state where any law has been enacted to restrain the running at large of horses, mules, asses, cattle, hogs, sheep, and goats, or any three (3) of these animals, by initiated local act, or otherwise, which includes the entire county, any political township in which no national or state highway or railroad traverses, and in which not more than fifteen percent (15%) of the lands within the township are improved or enclosed, a majority of the qualified electors of the political township may file, with the county court of the county, a petition showing good cause why the provisions of the local act should not be enforced, and that it would cause the inhabitants of the township great loss on account of being deprived of their ability to raise such livestock on unenclosed lands and the public range.

(b) The electors shall, before presenting the petition to the court, give fifteen (15) days' notice, by publication in some newspaper published in the county, where the act has been adopted, of the date on which the petition will be filed and presented to the court, setting forth in the notice the reasons why the township and petitioners should be exempted from the act, then the court shall hear the petition and any remonstrance that may be filed against it.

(c) If the court shall find, upon the hearing, that the requests of the petitioners to be exempt is reasonable, that not more than fifteen percent (15%) of the lands in the township are improved or enclosed, that

the political township is not traversed by any national or state highway or railroads, and that the enforcement of any such local act would cause hardship and loss to the inhabitants of the township, and that it would cause no injury or injustice to the citizens of adjoining townships, then the court is empowered to enter an order exempting the residents of the township from the requirements, provisions, and penalties of such local act.

History. Acts 1949, No. 204, § 1;
A.S.A. 1947, § 78-1430.

14-387-502. Effect of exemption.

(a) The livestock mentioned in § 14-387-501 shall be kept under such control and restraint as to prevent them from running at large in any other township in the county which has not been exempted as provided for in this subchapter.

(b) The owners or keepers of all such livestock as may be found running at large in any township not so exempted shall be subject to all the provisions of the act then in force in the county.

History. Acts 1949, No. 204, § 2;
A.S.A. 1947, § 78-1431.

SUBCHAPTER 6 — STOCK MARSHALS

SECTION.
14-387-601. Provisions cumulative.
14-387-602. Appointment.

SECTION.
14-387-603. Authority.

Effective Dates. Acts 1953, No. 394,
§ 3: Mar. 28, 1953. Emergency declared.

14-387-601. Provisions cumulative.

This subchapter is cumulative of existing laws and shall not prevent any person from restraining the running at large of animals as provided by law.

History. Acts 1953, No. 394, § 2;
A.S.A. 1947, § 78-1433.

14-387-602. Appointment.

The county judges of the respective counties, upon written petition signed by fifteen percent (15%) of the voters of the townships, are authorized and empowered to designate and appoint some competent person as stock marshal in any such townships within the county which have voted to restrain the running at large of livestock in them as provided in § 14-387-301 et seq.

History. Acts 1953, No. 394, § 1;
A.S.A. 1947, § 78-1432.

14-387-603. Authority.

(a)(1) Any person appointed stock marshal shall have authority to restrain and impound any animals found running at large outside the enclosures of the owner or keeper of it in any township which has voted to restrain the running at large of such animals, and shall be entitled to a reasonable fee for the taking up, feeding, and keeping of such animals.

(2) The stock marshal, within three (3) days, shall notify, in writing, the owner of the animals, if known, of the taking up of the animals, stating the amount due for the taking up, feeding, and keeping.

(b)(1) The stock marshal shall have a lien upon any such animals found running at large and taken up by him for the taking up, feeding, keeping, and care of them.

(2)(A)(i) If the owner or keeper fails or refuses to pay for the taking up, feeding, keeping, and care of the animals within ten (10) days after the receipt of the written notice, the stock marshal shall sell them for cash, at public auction in the township where the animals were taken up, after first advertising the sale by at least three (3) written notices posted in the township where the animals were taken up.

(ii) Any amount received from the sale of any animals in excess of the amount due for the taking up, feeding, keeping, and care of the animals shall be paid to the county treasurer.

(B) If the owner or keeper of the animals is not known, they shall be deemed to be strays and shall be dealt with as provided by § 14-387-107.

History. Acts 1953, No. 394, § 2;
A.S.A. 1947, § 78-1433.

SUBCHAPTER 7 — MISCELLANEOUS PROVISIONS

SECTION.

- 14-387-701. Certain counties excepted.
 14-387-702. Other provisions cumulative.
 14-387-703. Adding townships to stock district.
 14-387-704. Fence not required — Exception.

SECTION.

- 14-387-705. Driving of animals permitted.
 14-387-706. Damages and compensation for taking up strays.

Effective Dates. Acts 1921, No. 472, § 2: effective on passage.

Publisher's Notes. Acts 1915, No. 156, §§ 1-4, as amended, were repealed by Acts 1947, No. 368, § 6. The first four sections of the 1947 act (§§ 14-387-301 — 14-387-303, 14-387-305) are similar to the repealed sections. However, *Vangilder v. Faulk*, 244 Ark. 688, 426 S.W.2d 821

(1968), held that, although Acts 1947, No. 368, § 6, repealed Acts 1915, No. 156, §§ 1-4, the reenactment of substantial portions of the 1915 act by the 1947 act neutralized the repeal and the 1947 act (§§ 14-387-301 — 14-387-306) should be considered as amendatory of the 1915 act (§§ 14-387-701 — 14-387-706).

14-387-701. Certain counties excepted.

Sections 14-387-301 — 14-387-306, and 14-386-701 — 14-386-706 shall not apply to Hot Spring, Montgomery, Sebastian, Sharp, Nevada, Izard, Van Buren, Calhoun, Marion, Howard, Cross, Cleveland, Monroe, Arkansas, St. Francis, Crittenden, Clark, Drew, Desha, Bradley, and Union counties.

History. Acts 1915, No. 156, § 11; 1919, No. 258, § 4; 1919, No. 451, § 1; C. & M. Dig., § 332; Acts 1921, No. 472, § 1;

1923, No. 5, § 1; Pope's Dig., § 347; A.S.A. 1947, § 78-1410.

CASE NOTES

Columbia County.

Columbia county was not exempted from the provisions of Acts 1915, No. 156 as it existed prior to amendment, because Acts 1919, No. 258, § 3 (repealed by Acts

1947, No. 368, § 6) exempted Columbia county from that act, such exemption applying only to the provisions of the 1919 act. *Abney v. Warren*, 143 Ark. 572, 219 S.W. 748 (1920).

14-387-702. Other provisions cumulative.

All laws and parts of laws that are in force shall be cumulative with §§ 14-387-301 — 14-387-306, and 14-387-701 — 14-387-706, except where existing laws are in direct conflict with §§ 14-387-301 — 14-387-306, and 14-387-701 — 14-387-706.

History. Acts 1915, No. 156, § 11; 1919, No. 258, § 4; 1919, No. 451, § 1; C. & M. Dig., § 332; Acts 1921, No. 472, § 1;

1923, No. 5, § 1; Pope's Dig., § 347; A.S.A. 1947, § 78-1410.

14-387-703. Adding townships to stock district.

Whenever three (3) or more townships shall have been formed into a unit for the purpose of restraining any stock as enumerated in § 14-387-301 and shall have been perfected in the way and manner as provided in this chapter, then any other township, or any group of townships, that would be a contiguous whole to the unit thus formed, may be attached to, and become a part of, the unit, in the same way and manner as provided for in this chapter in the first instance, by merely stating in the petition, in addition to the other requirements, that the petitioners wish their township attached to the unit, naming the townships in it.

History. Acts 1915, No. 156, § 10; C. & M. Dig., § 330; Pope's Dig., § 345; A.S.A. 1947, § 78-1411.

CASE NOTES**ANALYSIS**

In general.
Applicability.
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In General.

Since this section is the only provision of the law authorizing the annexation of single townships to stock-law district, and since this subject matter is not covered by § 14-387-301 et seq., the legislature did not intend its repeal. *Goggin v. Ratchford*, 217 Ark. 180, 229 S.W.2d 130 (1950).

Applicability.

This section is no authority for the annexation of contiguous territory to stock-law district created under a special act. *Wright v. Raymer*, 165 Ark. 146, 263 S.W. 385 (1924).

Proceeding in county court for annexa-

tion of territory to an existing district organized under Acts 1915, No. 156 is not authorized by § 14-387-401, which is applicable only to stock-law districts created by the legislature. *Holt v. Howard*, 206 Ark. 337, 175 S.W.2d 384 (1943).

Since this section is part of a special or local act, annexation can be effected only in counties covered by Acts 1915, No. 156, and such annexations can only be made to districts already in existence when § 14-387-301 et seq., was passed. *Goggin v. Ratchford*, 217 Ark. 180, 229 S.W.2d 130 (1950).

Detachment.

A township which has, on petition, been added to a stock-law district already formed, has no right to be detached and exempted from the operation of the law. *Solomon v. Carroll*, 175 Ark. 888, 1 S.W.2d 63 (1927).

14-387-704. Fence not required — Exception.

It shall not be necessary for any person to fence against any of the species of animals enumerated in the petition that has been adopted, and it shall be no defense to any action or proceedings brought or had that the party taking up stock did not have his lands enclosed with a lawful fence. However, nothing in this section shall be construed to lessen or interfere with the obligations of the railroads in this state to fence the right-of-way of the railroads as is provided for by law.

History. Acts 1915, No. 156, § 8; C. & M. Dig., § 328; Pope's Dig., § 343; A.S.A. 1947, § 78-1408.

14-387-705. Driving of animals permitted.

Nothing in §§ 14-387-301 — 14-387-306, and 14-387-701 — 14-387-706 shall be construed as to prevent owners or other persons from driving any of the species of animals enumerated in § 14-387-301 from one place to another, or along the public highway, the owners of animals being responsible for all damages that any person may sustain in consequence of the driving of stock.

History. Acts 1915, No. 156, § 9; C. & M. Dig., § 329; Pope's Dig., § 344; A.S.A. 1947, § 78-1409.

14-387-706. Damages and compensation for taking up strays.

(a) If the owner or keeper of the stock restrained and the taker-up or the person damaged by the stock cannot agree on the amount of damage, then either party may apply to any justice of the peace where the taker-up resides for the appointment of three (3) appraisers to assess the damages done, or what would be a reasonable compensation for the taking up, feeding, and keeping of the stock. Thereupon, it shall be the duty of the justice to issue notice to three (3) disinterested householders of the township to appear at such place in the township as he may designate and assess the damages or compensation as required in this section.

(b)(1) The appraisers, or any two (2) of them so notified, shall take an oath that they will fairly and impartially assess the damages or compensation, or both, in the controversy, and they shall make out, sign, and deliver to each party a written statement of their findings as to damages and compensation.

(2)(A) Upon the payment of the damages and compensation and the expenses of the controversy, the owner of the stock shall be entitled to take them away.

(B)(i) If refused, the owner may maintain an action for them as in case of wrongful detention of property.

(ii) In any such action, if it be shown to the satisfaction of the court trying the cause that the owner or keeper of the stock had, previous to the appointment of appraisers, tendered to the taker-up of the stock in legal currency of the United States the amount of damages awarded by the appraisers and that the taker-up of the stock refused to accept the tender so made, then the taker-up of the stock shall pay all costs incident to the appraisal made by the appraisers as prescribed in this section.

(c)(1) The justice of the peace, the appraisers, and the witnesses, if any, shall be allowed the same fees as are allowed by law for similar services.

(2) The fees shall be paid by the owner of the stock before he is entitled to take the stock away.

History. Acts 1915, No. 156, §§ 5-7; §§ 325-327; Pope's Dig., §§ 340-342; 1919, No. 258, § 1; C. & M. Dig., A.S.A. 1947, §§ 78-1405 — 78-1407.

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